

No. 2017

United States
Circuit Court of Appeals
For the Ninth Circuit.

VICTOR VON ARX,

Plaintiff in Error,

vs.

A. J. BOONE,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court for
the District of Alaska, Division No. 1.

FILED

OCT 26 1911

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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VICTOR VON ARX,

Plaintiff,

vs.

A. J. BOONE,

Defendant.

Complaint.

The above-named plaintiff, complaining of the above-named defendant, for cause of action alleges:

I.

That at all the times hereinafter mentioned, the plaintiff was, and is now the owner, except only as against the United States, and was, and is entitled to the possession of the following described lot, tract, or parcel of land, to wit:

Situated on Douglas Island, about 500 feet north of the old Bear's Nest Mill, on the beach or tide land of Gastineau Channel, and being that certain lot and building thereon known as the The Beach Store and Lodging-house; also the two lots and frame buildings thereon immediately adjoining said Beach Store premises on the north.

II.

That the plaintiff and defendant both claim said property under a common source of title, to wit, one Edward Erlich, but the plaintiff's title is prior and superior to the claim of title asserted by the defendant, and the pretended title of the defendant is worthless and of no force or effect.

III.

That heretofore, to wit, on or about the 18th day of July, 1910, the defendant entered upon said premises

wrongfully and without right, and has ever since, and still does, withhold from the plaintiff the possession thereof, to his damage in the sum of \$1,000.00. That the reasonable rental value of said property is the sum of seventy-five dollars per month.

Wherefore plaintiff prays for judgment for the restitution of said property, for damages for the withholding thereof, and for costs of this action, and general relief.

MALONY & COBB,
Attorneys for Plaintiff. [1*]

United States of America,
District of Alaska,—ss.

Victor Von Arx, being first duly sworn, on oath deposes and says: I am the plaintiff above named. I have read the above and foregoing complaint, know the contents thereof, and the same is true as I verily believe.

VICTOR VON ARX.

Subscribed and sworn to before me this 12th day of October, 1910.

[Seal]

GUY McNAUGHTON,
Notary Public for Alaska.

[Endorsed]: Original. No. 819-A. In the District Court for Alaska, Division No. 1, at Juneau. Victor Von Arx, Plaintiff, vs. A. J. Boone, Defendant. Complaint. Filed Oct. 22, 1910. H. Shattuck, Clerk. By _____, Deputy. Malony & Cobb, Attorneys for Plff. Office: Juneau, Alaska. [2]

*Page number appearing at foot of page of original certified Record.

In the District Court for the District of Alaska, Division No. 1, at Juneau.

No. 819-A.

VICTOR VON ARX,

Plaintiff,

vs.

A. J. BOONE,

Defendant.

Answer.

I.

Answering paragraph I of plaintiff's complaint, defendant denies that at all times mentioned in his complaint plaintiff was the owner, except only as against the United States, of the property described in his complaint; denies that plaintiff is now the owner, except only as against the United States, of said property; and denies that plaintiff was or is entitled to the possession of all or any part or parcel of said property described in paragraph I of plaintiff's complaint.

II.

Answering paragraph II, defendant denies that plaintiff and defendant both claim said property under a common source of title, to wit, one Edward Ehrlich; denies that plaintiff's title is superior to the claim of title asserted by defendant's denies that the pretended title of defendant is worthless and of no force or effect; denies that plaintiff has any title or claim of title to said property or any part thereof.

III.

Answering paragraph III, defendant denies that

on or about July 18, 1910, defendant entered upon said premises wrongfully and without right; denies that plaintiff has suffered damage to the extent of One Thousand Dollars (\$1,000.00) or any other sum at all; denies that the reasonable rental value of said property is Seventy-five Dollars (\$75.00) per month, or any greater sum than Thirty [3] Dollars (\$30.00) per month. Defendant admits that he was in possession of said premises on July 18, 1910, and for a long time prior thereto, and that he is now in possession of all of said property.

IV.

Further answering plaintiff's complaint, defendant alleges:

First. That at the time of the commencement of the above-entitled action, defendant was the owner, as against everyone except the United States, and in possession of the following described lot, tract, or parcel of land described as follows, to wit: Situated on Douglas Island, Alaska, about five hundred feet north of the old Bear's Nest Mill, on the beach or tide land of Gastineaux Channel, and being that certain lot and building thereon known as the Beach Store and Lodging-house; also the two lots and frame buildings thereon immediately adjoining said Beach Store premises on the north. That defendant has been in the actual possession of all of said property ever since May 2, 1910. Defendant further alleges that said property above described is the same property for the recovery of which this suit is brought.

Second. That the nature of defendant's title to said property above described is as follows: (1st)

actual possession prior to and at the commencement of this action. (2d) That heretofore, to wit, on March 5, 1910, one Edward Ehrlich became the owner of all the property above described by virtue of two deeds of conveyance from D. A. Sutherland, U. S. Marshal for the District of Alaska, Division No. 1; said deeds are recorded in the office of the District Recorder at Juneau, Alaska, in Book 22 of Deeds, at pages Nos. 348 and 351. That on March 9, 1910, when said Edward Ehrlich was still the owner of said property, the United States Marshal for the District of Alaska, Division No. 1, levied upon all the right, title and interest of the said Ehrlich in and to all of said property, under a writ of execution duly issued out of this Court, upon a judgment in favor of one J. M. Jenne in Cause No. 667-A of the records of this Court, entitled [4] J. M. Jenne, Plaintiff, vs. Edward Ehrlich, Alec Smallwood and L. A. Slane, Defendants. And thereafter such proceedings were had that on May 2, 1910, said property, together with all the right, title, interest and estate of said Edward Ehrlich, therein, was sold by said United States Marshal at public sale to this defendant for the sum of \$825.00 (eight hundred, twenty-five dollars) cash. That thereafter the said Marshal executed and delivered to defendant a certificate of purchase for the said property which is in words and figures as follows, to wit:

“Certificate of Purchase.

United States of America,
District of Alaska,—ss.

I, H. L. Faulkner, United States Marshal of the

said district of Alaska, Division No. 1, do hereby certify that by virtue of a certain writ of Fieri Facias (or execution) issued out of and under the seal of the United States District Court for the District of Alaska, Division No. 1, on the eighth day of March, A. D. 1910, in cause No. 667-A, in favor of J. M. Jenne, Plaintiff, and against Edward Ehrlich, Defendant, directed and delivered to Daniel A. Sutherland, the then United States Marshal, for the District of Alaska, Division No. 1, and to his deputies, he the said Daniel A. Sutherland, as such United States Marshal for said District and Division, did on the ninth day of March, A. D. 1910, levy upon all the right, title, interest and estate had, owned or held by the said Edward Ehrlich, defendant in the above-entitled cause, on the eighth day of December, 1908, or at any time thereafter of, in and to the following described real estate located, lying and being at Douglas in said Division and District of Alaska, to wit, that certain lot, piece, or parcel of land known as the Beach Store and Lodging-house and the two lots adjoining same on the north together with all the buildings and improvements thereon, said property being located on the beach about five hundred feet north of the old Bear's Nest Boarding-house in the town of Douglas, Alaska. And that thereafter I, H. L. Faulkner, as United States Marshal for the District of Alaska, Division No. 1, did, on the [5] second day of May, A. D. 1910, at the front door of the United States Courthouse at the hour of two o'clock P. M. of said day and in the manner provided by law, and after duly advertising said property ac-

cording to the statutes in such cases made and provided, sell at public sale to A. J. Boone of Douglas, Alaska, for the sum of eight hundred, twenty-five dollars, \$825.00, lawful money of the United States, the said A. J. Boone being the highest and best bidder and that being the highest sum bid for the same at said sale, all the right, title and interest of said defendant, Edward Ehrlich, of which he was seized and possessed on the ninth day of March, 1910, the date of said levy, or at any time afterwards, of, in and to that certain lot, piece or parcel of land known as the Beach Store and Lodging-house and the two lots adjoining same on the north, said property being located on the beach about five hundred feet north of the old Bear's Nest Boarding-house in the town of Douglas, Alaska, together with the hereditaments and appurtenances thereunto belonging.

And I do further certify that the purchase money so bidden at said sale has been paid to me and that said sale will become absolute and the said A. J. Boone or his assigns will be entitled to a deed of conveyance of the said land within twelve months from the date of confirmation of said sale unless the same shall be sooner redeemed according to the statute in such case made and provided.

Given under my hand, this second day of May, A. D. 1910.

(Signed) H. L. FAULKNER,
United States Marshal for the District of Alaska.
Division No. 1."

That said certificate of purchase was duly recorded in Book 22 of Deeds, on page No. 369 of the records

of the District Recorder at Juneau, Alaska, on May 4, 1910, at the hour of ten o'clock in the forenoon of said day.

WHEREFORE defendant prays judgment, first, that plaintiff is not entitled to the possession of the property described in his complaint. Second, that defendant is the owner, as against all persons except the United States, and entitled to the possession of said property. Third, that defendant recover his costs and disbursements expended in this action.

Z. R. CHENEY,
Attorney for Defendant. [6]

United States of America,
District of Alaska,—ss.

I, A. J. Boone, being first duly sworn, on oath say:
That I am the plaintiff in the above-entitled action;
that I have read the foregoing Answer and know the
contents thereof, and believe the same to be true;
that I make this verification *because*

A. J. BOONE.

Subscribed and sworn before me this seventh day
of December, 1910.

[Seal]

Z. R. CHENEY,
Notary Public for Alaska.

I do hereby certify that the above and foregoing is a true, full and correct copy of the original herein.

_____,
Attorney for _____.

Due service of a copy of the within is admitted this
15th day of Dec., 1910.

J. H. COBB,
Attorney for Plaintiff.

[Endorsed]: No. 819-A. In the District Court for Alaska, Division No. 1, at Juneau. Victor Von Arx, Plaintiff, vs. A. J. Boone, Defendant. Answer. Filed Dec. 15, 1910. H. Shattuck, Clerk. By H. Malone, Deputy. Z. R. Cheney, Attorney for Plff. Office: Juneau, Alaska, Lewis Block. [7]

No. 819-A.

VICTOR VON ARX,

Plaintiff,

vs.

A. J. BOONE,

Defendant.

Reply.

Now comes the plaintiff by his attorneys, and for reply to the answer of the defendant alleges:

I.

Referring to the first paragraph of said affirmative answer, plaintiff admits that defendant was in possession of the property therein described at the time of the commencement of this action; but he denies all and singular the other and remaining allegations in said paragraph contained.

I.

Referring to the second paragraph of said affirmative answer, plaintiff denies that on March 5th, 1910, or at any other time since the year 1905, Edward Ehrlich became, or was the owner of the property described in the complaint by virtue of two deeds from D. A. Sutherland as Marshal for the District of Alaska, Division No. 1, or otherwise; and he tur-

ther denies that Edward Ehrlich was the owner or had any right, title or interest in said property at the time of the proceedings in said paragraph alleged. But the plaintiff admits that such proceedings constitute the nature and basis of the defendant's claim to said property.

MALONY & COBB,
Attorneys for Plaintiff.

United States of America,
District of Alaska,—ss.

Victor Von Arx, being first duly sworn, on oath deposes and says: I am the plaintiff above-named. I have read the above and foregoing reply, know the contents thereof, and the same is true, as I verily believe.

VICTOR VON ARX.

Subscribed and sworn to before me this 27th day of December, 1910.

[Seal]

J. H. COBB,

Notary Public for Alaska. [8]

[Endorsed]: Original. No. 819-A. In the District Court for Alaska, Division No. 1, at Juneau. Victor Von Arx, Plaintiff, vs. A. J. Boone, Defendant. Reply. Filed Dec. 29, 1910. H. Shattuck, Clerk. By E. W. Pettit, Deputy. Malony & Cobb, Attorneys for Plff. Office: Juneau, Alaska. [9]

In the District Court for the District of Alaska, Division No. 1, at Juneau.

No. 819-A.

VICTOR VON ARX,

Plaintiff,

vs.

A. J. BOONE,

Defendant.

Judgment.

This cause came regularly on for trial on January 9, 1911, upon the complaint, answer, and reply and the evidence submitted by the respective parties, before the Honorable Thomas R. Lyons, Judge of the above-entitled court, and a jury of nine good and lawful men, duly empaneled, qualified and sworn well and truly to try the issues and a true verdict render; the right of trial by a jury of twelve having been waived by both parties in open court and both parties having consented to a trial by the nine jurors chosen: and

Whereas said cause was then duly and regularly tried by and before said Judge and jury: and

Whereas after the close of the evidence, both parties having rested the case, plaintiff having made a motion for an order directing the jury to return a verdict for plaintiff, and said motion having been considered and overruled; and defendant having made a motion for an order directing a verdict in his favor, upon consideration thereof and after argument by counsel, the Court did grant said motion and did direct the jury to return a verdict for the defendant.

Whereupon the jury, under the order and instruction of the Court, rendered and returned the following verdict, to wit:

*"In the District Court for the District of Alaska,
Division No. 1, at Juneau. [10]*

No. 819-A.

VICTOR VON ARX,

Plaintiff,

vs.

A. J. BOONE,

Defendant.

Verdict.

We, the jury selected, impanelled and sworn to try the issues in the above-entitled cause, do find that the plaintiff is not entitled to the possession of the property described in the complaint or any part thereof.

Juneau, Alaska, January 10, 1911.

CLAUD ERICSON.

ALEX WHITE.

M. J. KELLY.

SAMUEL KEIST.

HARRY J. FISHER.

J. T. MARTIN.

SEVERIN STEPHENSAN.

STEVE RING.

LOLOLA HARPER."

Which said verdict was returned, received and filed in the presence of the jury, the respective counsel for the parties, and the Court, on the tenth day of January, 1911; and

Whereas, in due time thereafter, the defendant did

make and file herein his certain motion for a new trial of said cause, which said motion was, after argument by counsel, upon due consideration, overruled by the Court:

NOW, THEREFORE, on motion of Z. R. Cheney, attorney for defendant, the attorney for plaintiff being present, and premises considered,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff is not entitled to the property described in his complaint, or any part thereof; [11]

AND IT IS FURTHER ORDERED, ADJUDGED and DECREED that defendant have and recover from the plaintiff his costs and disbursements herein by him expended to be taxed by the Clerk, taxed at \$33.90.

Done in open court at Juneau, Alaska, January 25th, 1911.

THOMAS R. LYONS,
Judge of the District Court for the District of Alaska,
Div. No. 1.

[Endorsed]: No. 819-A. In the District Court for Alaska, Division No. 1, at Juneau. Victor Von Arx, Plaintiff, vs. A. J. Boone, Defendant. Judgment. Filed Jan. 25, 1911. H. Shattuck, Clerk. By H. Malone, Deputy. Z. R. Cheney, Attorney for Deft. Office: Juneau, Alaska, Lewis Block. [12]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 819-A.

VICTOR VON ARX,

Plaintiff,

vs.

A. J. BOONE,

Defendant.

Bill of Exceptions.

Honorable THOMAS R. LYONS, Judge.

JOHN H. COBB, Esq., for Plaintiff.

Z. R. CHENEY, Esq., for Defendant. [13]

No. 819-A.

VICTOR VON ARX,

Plaintiff,

vs.

A. J. BOONE,

Defendant.

Bill of Exceptions.

Be it remembered that on the trial of the above-entitled and numbered cause the following proceedings were had, to wit: [14]

Honorable THOMAS R. LYONS, Judge.

JOHN H. COBB, Esq., appearing for Plaintiff.

Z. R. CHENEY, Esq., appearing for Defendant.

[Proceedings Had January 9, 1911.]

Now on this, the 9th day of January, 1911, at ten o'clock in the forenoon of said day, the above-entitled

matter coming on for trial before the Honorable Thomas R. Lyons, Judge of the District Court for the First Division of the District of Alaska; and the parties to said action appearing in person and by their respective counsel; and the Court having denied the motion of the plaintiff for judgment on the pleadings, and allowing an exception to said ruling; and thereupon a jury of nine men being duly selected and qualified upon their *voir dire*; and the respective parties hereto having accepted and stipulated in open court that the said cause be tried before a jury of nine men, thereupon the following proceedings were had, to wit: [15]

Mr. COBB.—(Makes opening statement to Jury).

Mr. CHENEY.—I don't think I have any statement to be made at this time, your Honor. I don't concede there are any facts for the jury to try in this case.

COURT.—Very well. Call your first witness.

Mr. COBB.—We offer the records first.

Mr. CHENEY.—If the Court please, in order to preserve my record I would like to object to the introduction when he offers this evidence—the introduction of it.

COURT.—Very well.

Mr. CHENEY.—Might as well state my objections now—suppose he is going to offer—

COURT.—I submit Mr. Cheney it will be better to wait until the offer is made so your record will be in a better condition.

[Certain Offers in Evidence.]

Mr. COBB.—We first offer in evidence the deed from Edward Ehrlich to Alexander Smallwood. It is dated the 13th day of February, 1905, and recorded in book 20 of records of deeds of the Juneau Recording District, beginning at page 373. It conveys the property in controversy—

Mr. CHENEY.—We object now, if the Court please—the defendant objects to the introduction of any testimony in this case for the reason that the complaint does not state facts sufficient to constitute a cause of action; that is the general objection I wish to make, and then I want to make—want to object.

COURT.—Very well. Just examine the deed. The deed describes the identical property, does it, Mr. Cobb?

Mr. COBB.—Yes, sir; together with a lot of other property, houses, included in it. I will read that part [16] of it.

COURT.—Dated—what is it, again?

Mr. COBB.—Date of it is 13th day of February, 1905.

Mr. CHENEY.—That deed conveys a whole lot of property. It is pretty hard to tell very much about it. Defendant objects to the introduction of the deed on the ground that it is indefinite and uncertain as to the property described in the deed.

COURT.—I wish you would read it.

Mr. COBB.—I will read the part of it pertaining to this property. [17]

COURT.—The objection may be overruled and the deed admitted in evidence.

[Plaintiff's Exhibit No. 1.]

Plaintiff's Ex. 1 Rec'd in Ev. R. E. R.

“KNOW ALL MEN BY THESE PRESENTS, that I, Edward Ehrlich of Douglas, Alaska, party of the first part, for and in consideration of the sum of \$330 (Three hundred and thirty dollars) lawful money of the United States of America, to me in hand paid by Alexander Smallwood, party of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, remise, release and forever quitclaim unto the said second part and unto his heirs, executors, administrators and assigns forever, all my right, title and interest in and to the following described parts and parcels of land, situate and being in Douglas and Treadwell, Alaska, together with the buildings, houses, structures and room fixtures thereon, more [18] particularly described as follows, to wit:

“That certain lot and building thereon known as the ‘Beach Store’ within the exterior boundaries of the City of Douglas, being situate on the beach of Gastineau Channel in front of the Julia Lode Mine, said lot and buildings being about four hundred and fifty (450) feet in a northwesterly direction from the northwesterly line of Treadwell City, said lot being seventy-four feet by forty-nine feet, and the building thereon being forty-two feet by forty-two feet;

“Also that certain lot and buildings thereon adjoining said above described lot on the north and extending along the line of the Alaska Treadwell Gold Mining Company’s railroad track about forty-

two feet and extending westerly from said railroad track forty-two feet in width and the building erected thereon being thirty-two feet by twenty-six feet in dimensions;

“Also that certain lot and buildings thereon adjoining last above described lot on the north and extending along the line of the Alaska Treadwell Gold Mining Company’s railroad track a distance of thirty-five feet and extending in a westerly direction from said track a distance of twenty-five feet being covered with a platform;

“Also that certain lot and building and structures thereon, on the beach of Gastineaux Channel, and extending back over and including a portion of the high land abutting on said beach; said lot being situated about seven hundred feet in a northwesterly direction from the northwest line [19] of Treadwell City, being twenty-seven feet in distance up and down said beach, and nineteen feet in width and being covered by a cabin and platform;

“Also one two room house situated on the tide land on the west side of Gastineaux Channel east of the Julia Lode claim known as Lot No. 102, about five hundred and twenty feet northwest from post No. 4 of said Julia Lode claim and about forty-seven and one-half feet southwest from the Alaska Treadwell Gold Mining Company’s beach railroad track;

“Also that certain lot or parcel of ground with dwelling house and out-buildings thereon located on the beach of Gastineaux Channel in the townsite of Douglas, more particularly described and located as follows, to wit: the northeast corner of lot begins at

a point about two hundred and four (204) feet from center of Bears Nest Tunnel in a northwesterly direction, having a frontage on the beach of Gastineau Channel thirty-four (34) feet and extending back in a southwesterly direction twenty-six (26) feet, with the dwelling and out-houses thereon;

“All of the above and foregoing described property being within the exterior boundaries of the City of Douglas, Alaska;

“Also that certain lot and buildings thereon, and fixtures contained therein, on the beach in front of the Treadwell Mining Claim being situate about two hundred and ninety-four (294) feet in a northwest direction from the center of the [20] mouth of the tunnel on the Seven Hundred Mining claim, the mouth of said tunnel being near the northwest corner of said Seven Hundred Mining claim, the size of the building erected thereon being twenty-five feet by twenty-five in dimensions, and the size of said lot being twenty-seven feet by twenty-two feet in dimensions;

“Said lot and buildings thereon being within the present exterior boundaries of the City of Treadwell, Alaska;

“As a part of the consideration of this transfer second party agrees to assume and pay and does hereby assume the following described obligations of first party;

“(First) Note and mortgage to S. Sloan, dated June 30, 1902, for the sum of Four Hundred (\$400) Dollars;

“(Second) Note and mortgage of Martin Jenne,

dated October 1, 1902, for the sum of One thousand (\$1000) Dollars, with overdue interest thereon amounting to \$25.75;

“(Third) Note and mortgage of Joe Haddock, dated Dec. 1, 1904, for One hundred (\$100) dollars due July 1, 1905;

“(Fourth) Note and mortgage to Joe Haddock, dated Dec. 1, 1905, for One hundred fifty (\$150) dollars due Dec. 1, 1905;

“(Fifth) Note to Sam N. Ullrich dated Feb. 2, 1905, for three hundred (\$300) Dollars at six per cent, due August 2, 1905; [21]

“First party is hereby relieved by second party of all debts, responsibility or obligation by reason of said notes and mortgages;

“To have and to hold the same together with all and singular the tenements, and appurtenances thereunto belonging or in anywise appertaining, unto the said party of the second part, and to his heirs, executors, administrators and assigns forever;

“In Witness Whereof the said first party has hereunto set his hand and seal this 13th day of February, 1905.

“ED. EHRLICH.

“ALEX. SMALLWOOD.

“Signed, sealed and delivered in presence of

“JAMES HENRY LESIMAN.

“EDGAR J. WRIGHT.

“United States of America,
District of Alaska,—ss.

“This is to certify that before me a notary public for the District of Alaska, duly commissioned and

sworn, personally came on this 13th day of February, 1905, Edward Ehrlich and Alexander Smallwood, to me known to be the persons described in and who executed the within instrument and acknowledged to me that they signed and sealed the same freely and voluntarily and for the uses and purposes therein mentioned.

“Witness my hand and seal the day and year above written.

[Seal]

“EDGAR J. WRIGHT,

“Notary Public, District of Alaska.

“Filed for record at 2.55 P. M. Feb. 13, 1905.

“H. H. FOLSOM, Recorder.” [22]

Mr. CHENEY.—You claim that is the same property described in your complaint?

Mr. COBB.—The beach store.

Mr. CHENEY.—The next building—

Mr. COBB.—There are some others relating to it though—“That certain lot and buildings thereon adjoining last above-described lot on the north and extending along the line of the Alaska Treadwell Gold Mining Company’s railroad track a distance of thirty-five feet and extending in a westerly direction from said track a distance of twenty-five feet, being covered with a platform; also that certain lot and building and structures thereon, on the beach of Gastineau Channel and extending back over and including a portion of the high land abutting on said beach.”

Mr. CHENEY.—Object to that.

Mr. COBB.—That part of it is not in controversy.

COURT.—I think you have already described that, Mr. Cobb, all the property described in your complaint.

Mr. COBB.—I believe it is.

Mr. CHENEY.—Just two pieces of property—the beach store and lodging house and the two lots and store adjoining the lodging-house on the north.

Mr. COBB.—I believe that is all the property in controversy described there.

Mr. CHENEY.—I move if the Reporter got that last—this lower part of the upland, that the Reporter be instructed to strike that out.

COURT.—Yes; that may be stricken out, but the deed may be admitted in evidence and the objection to it [23] overruled.

Mr. CHENEY.—That is the part that is admitted is what I read to the jury.

COURT.—Yes, sir; I suppose it may be proper for the Stenographer here later to copy the deed.

Mr. COBB.—Yes, sir; in case it is necessary.

COURT.—And the record should also show that the book read from is one of the records of the mining district in which the land is situated.

Mr. COBB.—I so stated.

COURT.—I didn't catch that.

Mr. COBB.—I want the stenographer also to take a memorandum of the date of recording. This instrument was filed for record at 2:55 P. M. February 13, 1905.

COURT.—You have already given the book and page, haven't you, Mr. Cobb?

Mr. COBB.—I gave him that. Then we next offer in evidence a power of attorney from Alex Smallwood to Edward Ehrlich, dated the 16th day of April, 1907, and recorded and filed in the records at 10:50

A. M. the 18th day of April, 1907, as recorded in volume 6 of the records of powers of attorney in the Juneau Recording District, page 177.

Mr. CHENEY.—Defendant objects to this power of attorney for the reason that it is incompetent, irrelevant and immaterial and doesn't tend to sustain any allegations of plaintiff's complaint and on the further ground that it is not properly executed and witnessed according to the provisions of the statutes of Alaska.

COURT.—How many witnesses are there to the instrument? [24]

Mr. CHENEY.—One.

COURT.—Is it acknowledged?

Mr. COBB.—Yes, sir; before John Henson, and signed "William Stubbins" as one witness.

After argument.

COURT.—Objection overruled; exception allowed. It is a general power of attorney.

Mr. COBB.—Will you read it; it is a general and full power of attorney.

Mr. CHENEY.—I don't care whether you read it or not.

Mr. COBB.—I will read it, unless you waive it. It is a general power of attorney.

COURT.—If you read it, the stenographer won't have to go to the record thereafter.

Mr. COBB.—

[Plaintiff's Exhibit No. 2.]

Plff's. Ex. 2. R. E. R.

"KNOW ALL MEN BY THESE PRESENTS: That I, Alexander Smallwood, of Douglas, Alaska,

have made, constituted and appointed, and by these presents *does* make, constitute and appoint Ed. Ehrlich of same place, my true and lawful attorney for me and in my name, place and stead, and for my use and benefit to take full charge of all of my business in Douglas during my absence therefrom, to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belonging to me, and to have, use and take all lawful ways and means in my name, or otherwise, for the recovery thereof, by attachments, [25] arrest, distress or otherwise, and to compromise and agree for the same, and to make, sign, seal and deliver acquittances, or other sufficient discharges for the same, for me and in my name, to bargain, contract, agree for, purchase, receive and take lands, tenements, hereditaments, and accept the seizen and possession of all lands and all deeds and other assurances in the law therefor, and to lease, let, demise, release, convey, mortgage and hypothecate lands, tenements and hereditaments, upon such terms and conditions and under such covenants as he shall think fit.

“Also to bargain and agree for, buy, sell, mortgage, hypothecate, and in every way and manner deal in and with goods, wares and merchandise, choses in action and other property in possession or in action, and to release mortgages on lands or chattels, and to make, do and transact all and every kind of business of what nature and kind soever.

“And also for me and in my name, and as my act and deed, to sign, seal, execute and deliver and acknowledge such deeds, leases and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgages judgments and other debts, and such other instruments in writing, of whatever nature, as may be necessary or proper in the premises.

“Giving and granting unto him my said [26] attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present I Alexander Smallwood hereby ratifying and confirming all that my said attorney Ed. Ehrlich shall lawfully do or cause to be done, by virtue of these presents.

“In Witness Whereof I have hereunto set my hand and seal the 16th day of April, in the year of our Lord one thousand nine hundred and seven.

“ALEX SMALLWOOD. [Seal]

“Signed, sealed and delivered in presence of

“WM. STUBBIBS.

“United States of America,
District of Alaska,—ss.

“This is to certify that on this sixteenth day of April, A. D. 1907, before me, John Henson, a notary public in and for Alaska, duly commissioned and sworn, personally came Alexander Smallwood to me known to be the individual described in and who

executed the within instrument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

“Witness my hand and official seal, the day and year in this certificate first above written.

[Seal] “JOHN HENSON,

“Notary Public in and for _____, Residing at Douglas.

“Filed for record at 10:50 A. M., April 18th, 1907.

“H. H. FOLSOM,

“Recorder.”

We next offer in evidence a deed from Alexander Smallwood, by Edward Ehrlich, his agent and attorney in fact, to Victor Von Arx, the plaintiff in this suit, dated the 18th [27] day of July, 1910, signed, sealed and delivered in the presence of G. C. Winn and John G. Heid, and acknowledged before John G. Heid, notary public in and for the district of Alaska. This instrument filed for record 3 o'clock P. M., July 18, 1910, and recorded in book 22 of deeds, page 402.

COURT:—Describing the same property as described in the complaint?

Mr. COBB.—Yes, sir.

Mr. CHENEY.—Defendant objects to the introduction of this deed on the ground that it is incompetent and immaterial, and doesn't tend to sustain the allegations by the plaintiff, and that it is simply a quitclaim deed; that it conveys no legal estate in the property sufficient for plaintiff to recover in this action.

COURT.—Objection overruled. The deed may be

admitted and marked.

Mr. COBB.—I will read this deed.

[Plaintiff's Exhibit No. 3.]

Plff.'s Ex. No. 3. R. E. R.

“This Indenture made the 18th day of July, in the year of our Lord one thousand nine hundred and ten,

“Between Alexander Smallwood, by Edward Ehrlich, his attorney in fact, under power of attorney dated April 18, 1907, recorded in Book 6, page 177, of Powers of Attorney in the office of the recorder for Juneau Recording District, Alaska, Division No. I, the party of the first part, and Victor Von Arx, of Douglas, Alaska, the party of the second part, Witnesseth: That the said party of the first part, for and in consideration of the sum of Five hundred and twenty-six and no/100 dollars, lawful money of the United States of America, to him in hand paid by [28] by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns, the following-described property, to wit:

“That certain lot and building thereon known as the Beach Store and Lodging House, also two certain lots adjoining the above-mentioned lot on the north, together with the frame buildings thereon; also one certain foundation with all improvements thereon, situated immediately opposite and south of said Beach Store and Lodging House lot, across the rail-

road track from said Beach Store premises, and all of said above-described property being on the beach or tide land, about five hundred (500) feet north of the Bears Nest (old) mill, in the town of Douglas, Alaska;

“To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, his heirs and assigns forever.

“In Witness Whereof, the said party of the first part, has hereunto set his hand and seal the day and year first above written.

“ALEX SMALLWOOD. [Seal]

“By EDWARD EHRLICH, [Seal]

“His Agent and Attorney in Fact.

“Signed, sealed and delivered in presence of

“G. C. WINN.

“JOHN G. HEID.

“United States of America,
District of Alaska,—ss.

“This is to certify, that on this 18th day of July, A. D. 1910, before me, the undersigned, a notary public in and for the District of Alaska, duly commissioned and [29] sworn, personally came Edward Ehrlich as the attorney in fact of and for Alex ander Smallwood formerly of Douglas, Alaska, to me known to be the individual described in and who ex ecuted the within instrument, and acknowledged to me that he signed and sealed the same as the attorney in fact of and for said Smallwood and of his free and voluntary act and deed for the uses and purposes therein mentioned, and that he signed the name of

Alexander Smallwood as principal thereto, and his name as attorney in fact.

“Witness my hand and official seal the day and year in this certificate first above written.

[Seal]

“JOHN G. HEID,

“Notary Public in and for the District of Alaska, Residing at Juneau.

“Filed for record at 3 P. M., July 18, 1910.

“H. H. FOLSOM,

“Recorder.”

COURT.—May I see the deed, Mr. Cobb?

Mr. COBB.—On the question of rental, why I will just offer in evidence the admissions of the defendant's answer and read from that—that is worth \$30 a month and ask the jury, under the instructions of the Court, that they find for the plaintiff—to return a verdict for that amount.

COURT.—Very well. [30]

[Plaintiff's Exhibit No. 4]

819-A. Plff. Ex. 4. RER.

“III.

“Answering paragraph III, defendant denies that on or about July 18, 1910, defendant entered upon said premises wrongfully and without right; denies that plaintiff has suffered damage to the extent of one thousand dollars (\$1,000.00) or any other sum at all; denies that the reasonable rental value of said property is seventy-five dollars (\$75.00) per month, or any greater sum than thirty dollars (\$30.00) per month. Defendant admits that he was in possession of said premises on July 18, 1910, and for a long time prior thereto, and that he is now in possession of

all of said property.” [31]

Mr. COBB.—That is the plaintiff’s case.

COURT.—Call your first witness, Mr. Cheney.

[Motion for Directed Verdict, etc.]

Mr. CHENEY.—If the Court please, I don’t believe plaintiff has made out a case under the law and I wish to move at this time that the Court instruct the jury at this time to return a verdict for the defendant; that the plaintiff take nothing by the action. It seems to me, your Honor—I don’t know as the Court wants to listen to an argument—but it seems to me that as the facts set up in the complaint and the evidence introduced by these quitclaims, which your Honor knows don’t amount to anything at all in that kind of property, no possession having been shown—simply the introduction of these deeds under this complaint, plaintiff *filed*, to prove a case.

Argument of counsel.

Mr. COBB.—I thought that under the pleadings it was a common source of title and we can show, I think, it is easy enough to prove possession of Mr. Ehrlich at that time.

COURT.—I think it would be safer.

Mr. COBB.—Very well, I will call Mr. Von Arx.

Mr. CHENEY.—I object to the reopening of the case.

COURT.—The case may be reopened; motion denied.

[Testimony of Victor Von Arx, the Plaintiff, in His Own Behalf.]

Whereupon VICTOR VON ARX, the plaintiff, was called and duly sworn and testified as follows on his own behalf:

Mr. COBB.—Q. State your name.

Mr. CHENEY.—What is the purpose of this now, your Honor? [37]

Mr. COBB.—I want to seek to show that Mr. Ehrlich had possession in 1905.

Mr. CHENEY.—All right.

Mr. COBB.—Q. State your name.

A. Victor Von Arx.

Q. You are plaintiff in this case? A. Yes, sir.

Q. Mr. Von Arx, where do you live now?

A. I live in Douglas.

Q. How long have you lived in Douglas?

A. I have lived in Douglas from 1903.

Q. Since 1903. Do you know Edward Ehrlich?

A. I know Edward Ehrlich; yes.

Q. How long have you known him?

A. Why, I know him when the first month that was first he come up.

Q. You knew him then in 1903, 4 and 5?

A. Yes, knew him.

Q. Was he in possession of this Beach property—Beach store in 1905, before he sold to Smallwood?

A. He was in the store on the piles—with his name on the store.

Q. Is he running a store?

A. Running a store, yes.

(Testimony of Victor Von Arx.)

Q. State whether or not he had improvements on this property and what they consisted of.

A. What improvements?

Q. Any houses on the property? Are there any houses on this property? [38]

A. On this property and houses—there is a house up there, that belonged in Beach store, but no more—there was after 1905—was it 1908—was Smallwood then away—was put in—

Q. What I am asking you now—at the time Edward Ehrlich had the property in the early spring of 1905 if he had buildings upon it, did he?

A. Yes.

Q. Was running a store there? A. Yes.

Mr. COBB.—You may cross-examine.

Cross-examination.

(Mr. CHENEY.)

Q. There wasn't any building—was that store back in 1904 and 5, that building was built later?

A. I don't guess him; not very sure because was watching the month or summer if they get it built, but I believe he was building.

Q. You don't know—you are not sure about it, whether the building was built or not?

A. I can't tell, but should after building connect; they—it is not connected; therefore I don't know, but I believe it was built. That is all.

COURT.—That is all, Mr. Von Arx. That is the plaintiff's case, is it, Mr. Cobb?

Mr. COBB.—Yes, sir.

Mr. CHENEY.—Without repeating it, your

Honor, I will renew the motion asking the Court to direct a verdict for the defendant. [39]

COURT.—Very well, motion overruled. Call your first witness, Mr. Cheney.

Mr. CHENEY.—It is nearly twelve.

Whereupon Court adjourned, after the jury being duly admonished, until two o'clock this afternoon.

[Proceedings Had January 9, 1911, 2 P. M.]

Two o'clock P. M., January 9, 1911.

COURT.—Ready to proceed, gentlemen?

Mr. CHENEY.—Ready.

Mr. COBB.—Ready.

COURT.—Show that the jury is all present, Mr. Reporter. Proceed with the trial, gentlemen.

[Certain Offers in Evidence.]

Mr. CHENEY.—If it please the Court, defendant now offers in evidence the judgment and decree of this Court in cause No. 667-A, entitled J. M. Jenne vs. Edward Ehrlich, Alex Smallwood, and L. A. Slane.

* * *

COURT.—Any objection, Mr. Cobb?

Mr. CHENEY.—Just a moment, Mr. Cobb; I will find the judgment-roll.

Mr. COBB.—I presume you are offering it in the roll.

Mr. CHENEY.—Well, I haven't. My idea of the law is that if you offer a judgment of the Court and then the proceedings upon the judgment, is all that is necessary. I don't think it is necessary to offer the pleadings. I offer the judgment. It is here some place.

Mr. COBB.—Well, Mr. Cheney, in order that we may shorten up matters—do you offer that as a decree against Ehrlich alone or against Smallwood also?

Mr. CHENEY.—I offer the judgment for what it is worth. The Court will decide what it amounts to.

[40]

Mr. COBB.—I understand.

Mr. CHENEY.—Do you object to the judgment?

Mr. COBB.—We object to this as a judgment or decree in any way affecting Smallwood on the ground that the judgment-roll to which the judgment is attached shows that there was neither personal or constructive service upon Alex Smallwood and the judgment against him is void, though it is a personal judgment against Ehrlich because the Court will take judicial knowledge. I desire to call the Court's attention to a decree of this court entitled *Von Arx vs. J. M. Jenne et al.*, in which an injunction was applied for, and Judge Cushman held and ruled that this identical judgment as a judgment against Smallwood was void, and from that no appeal was taken, but that it was a mere personal judgment, not a decree at all, against Ehrlich.

Argument.

COURT.—I will overrule the objection with the understanding if I determine during the evening that it shouldn't be admitted that it will be subject to be stricken.

Argument.

Mr. COBB.—Note an exception.

COURT.—Yes, sir.

Mr. CHENEY.—

[Defendant's Exhibit "A"—Decree of Foreclosure.]

Deft's Ex. A. R. E. R.

"*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 667-A—IN EQUITY.

J. M. JENNE,

Plaintiff,

vs.

EDWARD EHRLICH, ALEX SMALLWOOD, and
L. A. SLANE.

DECREE OF FORECLOSURE.

"This cause coming on regularly for hearing, upon motion of Z. R. Cheney, attorney for plaintiff; [41] the plaintiff appearing by his said attorney and the defendants in nowise appearing;

"It appearing to the Court that the summons and complaint in this cause were duly served upon the defendants and each of them and that more than thirty days has elapsed since such service and that the defendants Edward Ehrlich and Alex Smallwood and each of them have wholly failed to appear and that they and each of them are now in default for want of an answer or other appearance; and it further appearing that the defendant L. A. Slane has appeared and filed an answer to said complaint wherein he claims a lien upon a part of the property described in the bill of complaint herein, and the Court having heretofore made and filed its findings of fact and conclusions of law in the premises and now being fully advised in the premises

“It is ordered, adjudged and decreed: First: that the mortgage executed by the defendant Edward Ehrlich in favor of the plaintiff dated November 1st, 1902, for the sum of One thousand dollars with interest & attorneys’ fees, be and the same is hereby declared to be a first lien upon the two lots and the building thereon adjoining the Beach Store and Lodging House on the north located on the beach on Gastineaux Channel in the town of Douglas, Alaska, and that said mortgage be and the same is hereby declared to be a second lien upon the lot and building located thereon known as the Beach Store and Lodging House located on the beach on Gastineaux Channel in the town of Douglas, Alaska;

“Second; that the mortgage executed by the defendant [42] Edward Ehrlich in favor of the defendant L. A. Slane dated July 2d, 1902, for the sum of four hundred dollars with interest and attorneys’ fees, be and the same is hereby declared to be a first lien upon the lot and building thereon known as the Beach Store and Lodging House located on the beach of Gastineaux Channel in the town of Douglas, Alaska;

“Third; that the two mortgages above described be foreclosed by the sale of the property therein described; that the property therein described be advertised and sold at public auction by the United States Marshal for the District of Alaska, Division No. 1, according to the statutes in such cases made and provided; that the property described in the two mortgages be sold in separate parcels, that is to say, the lot and buildings thereon known as the Beach

Store and Lodging House and which is more particularly described in the said mortgage of the defendant L. A. Slane shall be first sold and the proceeds thereof, after paying the costs and expenses of said sale, shall be applied in payment of the mortgage of the defendant L. A. Slane and the surplus, if any there be, shall be applied in payment of the mortgage of the plaintiff, and the surplus, if any there be, after such payments, shall on demand be paid to the defendant Edward Ehrlich; the remaining two lots and the building thereon adjoining the above described Beach Store and Lodging House shall then be sold and the proceeds of such sale, after payment of all costs and expenses of sale shall be applied in payment of the mortgage of the plaintiff [43] herein, and the surplus, if any there be, after such payments shall be paid, on demand, to the defendant Edward Ehrlich;

“Fourth; that the defendants Edward Ehrlich and Alex Smallwood and each of them, and all other persons whomsoever having or claiming any interest in or lien upon any of the property conveyed by the mortgages herein mentioned or either of them, subsequent to making and filing of said mortgages are hereby forever barred and foreclosed of any right, title or interest in said property or any part thereof;

“It is further ordered, adjudged and decreed that the plaintiff do have and recover judgment against the defendant Edward Ehrlich for the sum of eight hundred fifty and no/100 dollars with interest thereon at the rate of ten per cent per annum from August 15th, 1906, amounting to \$1053.02, together

with the sum of fifty dollars as attorney fees for the foreclosure of said mortgage, amounting in all to the sum of Eleven hundred three and 02/100 (\$1103.02) Dollars, together with his costs and disbursements herein expended taxed at \$29.10 dollars;

“That the defendant L. A. Slane do have and recover judgment against the defendant Edward Ehrlich for the sum of three hundred sixty-nine and 85/100 dollars with interest thereon at the rate of twelve per cent per annum from December 12th, 1904, amounting to \$546.83, together with the sum of seventy-five dollars as attorney fees for the foreclosure [44] of said mortgage, amounting in all to the sum of Six hundred twenty-one & 83/100, together with his costs and disbursements herein expended taxed at —— dollars.

“Done in open court this 8th day of December, 1908.

“ROYAL A. GUNNISON,
“Judge.

“No. 667-A. In the District Court for Alaska, Division No. 1. at Juneau. J. M. Jenne, Plaintiff. vs. Edward Ehrlich, et al., Defendants. Findings of Fact, Conclusions of Law and Decree. Z. R. Cheney, Attorney for Plaintiff. Office, Juneau, Alaska, Delaney Building. Filed Dec. 8, 1908. C. C. Page, Clerk. By A. W. Fox, Deputy.”

Mr. CHENEY.—Now, I will offer the Marshal’s deeds, which are set up in the answer, from D. A. Sutherland, United States Marshal, to Edward Ehrlich. Have you any objection?

Mr. COBB.—No; let them go in subject to the ob-

jections we make to the entire record and what the Court instructs. We waive the reading of them.

COURT.—All right.

Mr. CHENEY.—We don't waive the reading of them.

[Defendant's Exhibit "B"—U. S. Marshal's Deed.]

Von Arx vs. Boone, Deft's. Ex. B.—R. E. R.

"UNITED STATES MARSHAL'S DEED.

"This Indenture, made and entered into this 5th day of March, in the year 1910, between Danial A. Sutherland, United States Marshal for the First Division, District of Alaska, by virtue of his office, of the first part, and Edward Ehrlich, of the town of Douglas, Division Number One, District of [45] Alaska, of the second part;

"Witnesseth: That whereas, at the regular December, 1908, term of the District Court of the United States held at the town of Juneau, in and for said District and Division on the eighth day of December, in the year A. D. 1908, J. M. Jenne, plaintiff, and L. A. Slane, one of the defendants respectively recovered judgment against Edward Ehrlich, defendant in a certain plea for the following sums, to wit: eleven hundred three dollars and two cents (\$1103.02) and twenty-nine dollars and ten cents (\$29.10) costs of suit, and six hundred twenty-one dollars and eighty-three cents (\$621.83); and

"Whereas, on the 28th day of December, A. D. 1908, there issued out of said District Court an order of sale and execution in the said action for the collection of said judgment, which said order of sale and execution were directed to James M. Shoup, the

then United States Marshal in and for said District of Alaska, Division Number One, and that said order of sale and execution were executed by the said James M. Shoup, the then United States Marshal, by virtue of his office and according to the Statutes in said case made and provided on the first day of February, A. D. 1909, upon a certain tract or parcel of land hereinafter described, which said land was advertised for sale by the said United States Marshal according to law and afterwards, to wit: on the first day of February, 1909, in pursuance of said advertisement the said then United States Marshal exposed said land to public sale at the front door of the [46] Federal Courthouse, at the said town of Juneau, and George Myers bid therefor the sum of one hundred seventy-five and 00/100 dollars (\$175.00), which being the highest and best bid, the said land and premises were struck off and sold to him, the said George Meyers, which will more fully appear by reference to a certificate of purchase given to the said George Meyers by the said James M. Shoup, the then United States Marshal, bearing date the first day of February, 1909; and

“Whereas, on the 2d day of March, 1910, and within twelve months after the confirmation of said sale of said premises to the said George Meyers, came Edward Ehrlich, the judgment debtor in said cause entitled J. M. Jenne versus Edward Ehrlich, Alex Smallwood and L. A. Slane, being cause No. 667—A of the records of said District Court, and redeemed said property by paying to Daniel A. Sutherland, the United States Marshal, and party of the first

part herein, the sum of one hundred ninety-three dollars and twenty-six cents (\$193.26), said sum being the amount of the purchase price paid by the said George Meyers with interest at the rate of 8% per annum thereon from February 1st, 1909, the date of the sale, together with taxes paid by the said George Meyers thereon, after the purchase thereof by him at said Marshal's sale; and the said Edward Ehrlich thereupon received a certificate of redemption executed by the said Daniel A. Sutherland, United States Marshal, bearing date the second day of March, 1910, by virtue of which redemption and [47] certificate the said Edward Ehrlich and his assigns become entitled to a deed of said premises from the said United States Marshal according to law on this 5th day of March, 1910.

“Now, therefore, I, Daniel A. Sutherland, United States Marshal of said District and Division by virtue of my office and by force of the Statute in such case made and provided, for and in consideration of the sum of one hundred ninety-three and 23/100 dollars (\$193.23) in hand to me paid by the said Edward Ehrlich party of the second part, have granted, bargained and sold and by these present do grant, bargain, and sell unto the said Edward Ehrlich all the right, title, interest and claim, which the said defendant Edward Ehrlich and Alex Smallwood on the day of sale aforesaid, had in and to the following described tract or parcel of land, to wit: two lots and buildings thereon adjoining the Beach Store and Lodging House on the north which said lots and buildings are located on Douglas Island on the beach

of Gastineau Channel, in the town of Douglas, District and Division aforesaid.

“To have and to hold the said tract or parcel of land together with the appurtenances thereunto belonging unto the said Edward Ehrlich and his heirs and assigns forever.

“In Witness Whereof, I have hereunto set my hand and seal this 5th day of March, in the year of our Lord A. D. one thousand nine hundred and ten.

“D. A. SUTHERLAND,

“United States Marshal for the District of Alaska,
Division No. One.

“United States of America,
District of Alaska,—ss. [48]
Division No. One.

“I, Henry Shattuck, Clerk of the District Court of the United States for the District of Alaska, Division No. One, do hereby certify that Daniel A. Sutherland, United States Marshal for the said District of Alaska, Division Number One, who is known to me to be the person named in and who executed the foregoing deed of conveyance, this day personally appeared before me and acknowledged that he executed the same as United States Marshal for the uses and purposes therein set forth.

“In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, at the City of Juneau, in said District and Division

this 5th day of March, in the year of our Lord, A. D. 1910.

“H. SHATTUCK,
“Clerk.

“Filed for record at 3 P. M., March 8th, 1910.

“H. H. FOLSOM,
“Recorder.

“I hereby certify that the foregoing is a full, true and correct copy of the above instrument as recorded in the office of the Recorder of Juneau Recording District, District of Alaska, Division Number One, in Book 22 of Deeds, at pages 351 and 352 thereof.

“Witness my hand and official seal this 9th day of Jan. 1911.

“[Seal] G. C. WINN,
“Recorder.”

Mr. CHENEY.—The other deed is exactly the same as this, your Honor, except it is to the other piece of property. So won’t read it. Will ask to introduce both deeds. [49]

COURT.—May be admitted.

[Defendant’s Exhibit “C”—U. S. Marshal’s Deed.]

Von Arx vs. Boone Deft. Ex. C.—R. E. R.

“UNITED STATES MARSHAL’S DEED.

“This Indenture, made and entered into this 5th day of March, in the year of our Lord, 1910, between Daniel A. Sutherland, United States Marshal for the District of Alaska, by virtue of his office, of the first part, and Edward Ehrlich of the town of Douglas, District of Alaska, Division No. One, of the second part;

“Witnesseth, that whereas, at the regular Decem-

ber, 1908, term of the District Court held at the town of Juneau in and for said District and Division on the 8th day of December, in the year A. D. 1908, J. M. Jenne, plaintiff, and L. A. Slane, one of the defendants in the cause entitled J. M. Jenne, plaintiff, vs. Edward Ehrlich, Alex Smallwood and L. A. Slane, defendants No. 667-A, recovered a judgment for the following amounts respectively, to wit one thousand one hundred and three 02/100 (\$1103.02) dollars with twenty-nine 10/100 (\$29.10) dollars costs of suit and six hundred twenty-one 83/100 (\$621.83) dollars, against the said Edward Ehrlich, defendant therein; and

“Whereas, on the 28th day of December, A. D. 1908, an order of sale and an execution issued out of said District Court for the collection of said judgment, which said order of sale and execution was directed to said James M. Shoup, the then United States Marshal as aforesaid; and

“Whereas, said order of sale and execution were [50] executed by the said United States Marshal by virtue of his office, and according to the Statute in such case made and provided on the first day of February, 1909, upon a certain tract or parcel of land hereinafter described, which said land was advertised for sale by said United States Marshal according to law and afterward, to wit, on the said 1st day of February, 1909, in pursuance of said advertisement, the said United States Marshal exposed said land to public sale at the front door of the Federal Courthouse at Juneau, in said District and Division and L. A. Slane bid the sum of three hundred

(\$300.00) dollars therefor, which being the highest and best bid the said land and premises were struck off and sold to him, the said L. A. Slane, which will more fully appear by reference to a certificate of purchase, given to said L. A. Slane by the said James M. Shoup, the *ten* United States Marshal, bearing date the first day of February, 1909; and

“Whereas, the said certificate of purchase was on the 4th day of February, 1909, duly assigned by the said L. A. Slane to A. J. Boone of the town of Douglas, District and Division aforesaid; and

“Whereas, on the 2d day of March, 1910, and within twelve months after the confirmation of said sale came Edward Ehrlich, the judgment debtor in the aforesaid cause, No. 667-A, and redeemed said property by paying to Daniel A. Sutherland, United States Marshal and the party of the first part herein the sum of three hundred twenty-six 13/100 (\$326-13/100) dollars, said sum being the amount of the purchase [51] price paid by the said L. A. Slane with interest at the rate of eight per cent per annum thereon from February 1st, 1909, the date of the sale, and the said Edward Ehrlich thereupon received a certificate of redemption executed by the said Daniel A. Sutherland, United States Marshal, bearing date the second day of March, 1910, by virtue of which redemption and certificate the said Edward Ehrlich and his assigns became entitled to a deed for said premises from the said United States Marshal according to law on this 5th day of March, 1910;

“Now, therefore, I, Daniel A. Sutherland, United States Marshal of said District and Division by virtue

of my office and by force of the Statute in such case made and provided, for and in consideration of the sum of three hundred twenty-six 13/100 (\$326.13) dollars to me in hand paid by the said Edward Ehrlich have granted, bargained and sold and by these presents do grant, bargain and sell unto the said Edward Ehrlich all of the right, title and claim which the said Edward Ehrlich and Alex Smallwood, defendants, on the day of said sale; had in and to the following-described premises, more particularly described as follows, to wit:

“Being the lot and building located thereon, known as the Beach Store and Lodging House located on Douglas Island on the beach of Gastineau Channel in the town of Douglas Island, District and Division aforesaid.

“To have and to hold the said tract or parcel of land and premises, together with the appurtenances [52] thereunto belonging unto the said Edward Ehrlich and his heirs and assigns forever.

“In Witness Whereof, I have hereunto set my hand and seal, this 5th day of March, in the year of our Lord, one thousand nine hundred and ten.

“D. A. SUTHERLAND,

“United States Marshal for the District of Alaska,
Division No. One.

“United States of America,
District of Alaska,
Division No. One,—ss.

“I, Henry Shattuck, Clerk of the District Court of the United States for the District of Alaska, Division No. One, do hereby certify that Daniel A. Suther-

land, United States Marshal for the said District of Alaska, Division No. One, who is known to me to be the person named in and who executed the foregoing deed of conveyance, this day personally appeared before me and acknowledged that he executed the same as United States Marshal for the uses and purposes therein set forth.

“In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, at the City of Juneau, in said District, this 5th day of March, in the year of our Lord, A. D. 1910.

“[Seal] H. SHATTUCK, Clerk.

“Filed for record at 3 P. M., March 8th, 1910.

“H. H. FOLSOM, Recorder.

“I hereby certify that the above and foregoing is a full, true and correct copy of said instrument as recorded in the office of the Recorder of Juneau Recording District, District of Alaska, Division Number One, in book 22 of Deeds, on pages 348 and 349.

[53]

“Witness my hand and official seal this 9th day of Jan., 1911.

“[Seal] G. C. WINN, Recorder.”

Mr. CHENEY.—Mr. Cobb, will you admit that this is the same property described in the complaint?

Mr. COBB.—Yes.

Mr. CHENEY.—The descriptions may not be the same. Let the record show that the plaintiff admits that is the same property in these deeds as described in the plaintiff's complaint. I offer those in evidence.

COURT.—You may mark those.

Mr. CHENEY.—Defendant now offers in evidence the execution in case 667-A, entitled J. M. Jenne against L. A. Slane; execution upon the judgment in favor of J. M. Jenne and against the same parties, together with the return of the Marshal and the proof of publication attached to it.

COURT.—Any objection, Mr. Cobb?

Mr. COBB.—That is the second execution?

Mr. CHENEY.—Yes.

Mr. COBB.—We will make our objection to the entire record when it is in.

COURT.—Very well, it may be admitted with that understanding.

Mr. CHENEY:

[Defendant's Exhibit "D"—Execution.]

Von Arx vs. Boone. Deft's Ex. D.—RER.

*"In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 667-A.

J. M. JENNE,

Plaintiff,

vs.

EDWARD EHRLICH, ALEX SMALLWOOD,
and L. A. SLANE,

Defendants.

EXECUTION.

[54]

"To any Marshal of the District of Alaska or to his
Deputy, Greeting:

"Whereas, on December 8, 1908, by consideration
of the above-entitled Court, J. M. Jenne, plaintiff, re-

covered judgment against Edward Ehrlich, defendant, for the sum of one thousand three and 2/100 dollars (\$1003.02) and the further sum of twenty-nine and 10/100 dollars (\$29.10) costs and disbursements, which judgment was enrolled and docketed in the office of the Clerk of said court on said date.

“And whereas on February 1, 1909, there was paid and credited on said judgment the sum of one hundred sixty-six and 25/100 dollars (\$166.25), leaving a balance due and unpaid on said judgment on February 1, 1909, of nine hundred seventy-nine and 7/100 dollars (\$979.07).

“Now therefore you are hereby commanded that out of the personal property of the said defendant in your district, or if sufficient cannot be found, then out of the real property of the said defendant in your district, on or after December 8, 1908, you satisfy the sum of nine hundred seventy-nine and 7/100 dollars (\$979.07) now due on said judgment with interest thereon from February 1, 1909, at the rate of eight per cent per annum, amounting at this date to the sum of one thousand sixty-three and 92/100 dollars (\$1063.92) and also the costs of and upon this writ and the accruing costs; and that you make due returns of the same and of this writ.

“Witness the Honorable E. E. Cushman, Judge of the District Court for the District of Alaska, Division Number One and the seal of said Court affixed at Juneau in said district this 8th day of March, [55] 1910.

“[Seal]

H. SHATTUCK,

“Clerk.

“PROOF OF PUBLICATION.

“United States of America,
District of Alaska,—ss.

“E. D. Beattie, being first duly sworn, deposes and says that he is the foreman of the ‘Daily Alaska Dispatch,’ a newspaper published at Juneau, in the District of Alaska by the Dispatch Publishing Co.; that the notice of Marshal’s sale, a copy of which is hereto attached and made a part of this affidavit, was first published in said newspaper, in its issue dated the 11th day of March, 1910, and was published in each weekly issue of said newspaper for 5 consecutive weeks thereafter, the full period of 30 days, the last publication thereof being in the issue dated the 10th day of April, 1910.

“E. D. BEATTIE.

“Subscribed and sworn to before me this third day of May, A. D. 1910.

“[Seal]

Z. R. CHENEY,

“Notary Public for Alaska.

“NOTICE OF MARSHAL’S SALE.

“Notice is hereby given that under and by virtue of a Writ of Execution issued out of the District Court for the District of Alaska, Division No. 1, at Juneau, upon a judgment rendered and entered December eighth, 1908, in a cause No. 667-A, wherein J. M. Jenne is plaintiff and Edward Ehrlich, Alex Smallwood and L. A. Slane are defendants, in favor of the plaintiff and against Edward Ehrlich, defendant, for the sum of eleven hundred thirty-two and [56] 12/100 (\$1132.12) dollars damages and costs

and disbursements, which said judgment was on December eighth, 1908, duly docketed in the above named court and cause, upon which judgment there is now due the sum of \$1063.92, I, Daniel A. Sutherland, United States Marshal, have levied upon the following described real property belonging to the defendant, Edward Ehrlich, located in Douglas, in the District of Alaska, described as follows, to wit:

“That certain lot and building thereon known as the Beach Store and Lodging House, also two certain lots adjoining said first mentioned lot on the north together with the frame building located thereon, all of said property lying and being on the beach about five hundred feet north of the old Bears Nest Boarding House, in the town of Douglas, Alaska; and that on Saturday, the 16th day of April, 1910, at the front door of the United States Court-house in Juneau, Alaska, at the hour of eleven o’clock in the forenoon of said day, I will sell all the right, title and interest of said defendant, Edward Ehrlich, in and to said above described property, at public vendue, to the highest and best bidder for cash. The said property will be sold in separate parcels, that is to say, the lot and building known as the Beach Store and Lodging House will be first sold and if the proceeds therefrom are not sufficient to satisfy the judgment and costs of sale, then the remaining property will be sold and the proceeds thereof applied

in satisfaction of said judgment and costs. [57]

“Dated at Juneau, Alaska, March 9, 1910.

“DANIEL A. SUTHERLAND,

“United States Marshal.

“By W. D. McMillan,

“Office Deputy.

“First Pub. Mar. 11—5t.

“United States of America,
District of Alaska,
Division No. One,—ss.

“I hereby certify that I received the within and hereto attached writ of execution on the 8th day of March, 1910, and that thereafter on the 9th day of Mar., 1910, I did levy upon the following described real property belonging to the defendant Edward Ehrlich located in the town of Douglas, District of Alaska, Division No. One, to wit: that certain lot and building thereon known as the Beach Store and Lodging House; also two certain lots adjoining said first mentioned lot on the north together with the frame building located thereon; all of said property lying and being on the beach about five hundred feet north of the old Bears’ Nest boarding house, in the town of Douglas, aforesaid; and on the said 9th day of March, 1910, I did publish and post notice of sale of said property, as required by law; said notice of sale was published for four weeks consecutively (five publications) in the Alaska Daily Dispatch, a newspaper of general circulation published in the town of Juneau, Alaska, a copy of which said notice is hereto attached. Said sale of said property was advertised to take place on the 16th day of April,

1910. Thereafter on the 16th day of April upon a restraining order issued by the District Court in cause No. 781A, I postponed said sale until Apr. 23, 1910, as required [58] by law, and on Apr. 23, for like cause I postponed said sale in like manner until Apr. 27, 1910, and on Apr. 27th for like cause and in like manner I postponed said sale until Apr. 30th, 1910, and on April 30th, 1910, I delivered the within execution to my successor in office, H. L. Faulkner, U. S. Marshal.

“Dated at Juneau, Alaska, Apr. 30, 1910.

“D. A. SUTHERLAND,

“U. S. Marshal.

“By Hector McLean,

“Office Deputy.

“United States of America,
District of Alaska,
Division No. One,—ss.

“I hereby certify that I received the within and hereto attached writ of execution on the 30th day of April, 1910, from my predecessor in office, Daniel A. Sutherland, U. S. Marshal for the District of Alaska, Division No. One, and that upon said day I postponed the within mentioned sale of the within described property until 2 o'clock P. M. on the 2nd day of May, 1910; and thereafter on the 2nd day of May, 1910, at 2 o'clock P. M., at the front door of the United States courthouse at Juneau, Alaska, I offered for sale at public auction the certain lot and building known as the Beach store and lodging house, described herein; there being no bids, I then offered for sale the two certain lots adjoining the first mentioned lot and

lodging house, described herein; there being no bids, I then offered for sale both pieces of property above mentioned, together; and sold the said property to A. J. Boone of Douglas, Alaska, for the sum of \$825, that being [59] the highest and best sum bid for said property. I therefore return the within execution satisfied in full.

“Dated at Juneau, Alaska, May 3, 1910.

“H. L. FAULKNER,

“U. S. Marshal.

“By Hector McLean,

“Office Deputy.

“MARSHAL’S FEES:

Service of writ.....	\$ 3.00
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5% com. on \$500.....	25.00
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3% com. on \$325.....	9.75
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Total.....	\$37.75
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“No. 667-A. In the District Court for the District of Alaska, Div. No. 1, at Juneau. J. M. Jenne, Plaintiff, vs. Edward Ehrlich, Alex Smallwood & L. A. Slane, Defendants. Execution in favor of J. M. Jenne.

Amt.	979.07
-----------	--------

Interest.....	84.85
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Total.....	1063.92
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“THIS WRIT FILED MAY 3, 1910. H. SHATTUCK, CLERK. BY H. MALONE, DEPUTY, Z. R. CHENEY, ATTORNEY FOR PLFT., JUNEAU, ALASKA. U. S. MARSHAL’S OFFICE, JUNEAU, ALASKA. RECEIVED FOR

SERVICE MAR. 8, 1910. D. A. SUTHERLAND,
U. S. MARSHAL, BY H. L. FAULKNER, CHIEF
OFFICE DEPUTY, MARSHAL'S DKT. NO.
2157."

I will waive the reading of the notice of sale if Mr. Cobb will waive it.

COURT.—You offer the return in evidence too?

Mr. CHENEY.—Yes.

Mr. COBB.—Same objection as to the rest.

COURT.—Very well.

Mr. CHENEY.—Now, will you concede that this writ shows—that the property described in this return and execution is the same property described in the complaint?

Mr. COBB.—Why, I don't know whether that is the same property. He must of course intend to convey the same property. [60]

Mr. CHENEY.—We offer it in evidence. The description may be a little different—the beach store and lodging-house.

Mr. COBB.—Oh, yes; that is doubtless the same property.

Mr. CHENEY.—All right.

COURT.—It may be received and marked.

Mr. CHENEY.—I now offer the order of the Honorable E. E. Cushman, Judge of this Court, confirming the sale in the case of 667-A, J. M. Jenne vs. Edward Ehrlich, Alex Smallwood and L. A. Slane. Any objection to the order?

Mr. COBB.—Let's see the order. It may go in subject to the same objection.

COURT.—Very well, may be admitted, going to the whole record.

Mr. CHENEY:

[Defendant's Exhibit "E"—Order Confirming Sale.]

Von Arx vs. Boone. Deft's Ex. E. RER.

*"In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

J. M. JENNE,

Plaintiff,

vs.

EDWARD EHRLICH, ALEX SMALLWOOD and
L. A. SLANE,

Defendants.

"ORDER CONFIRMING SALE UNDER EXECUTION.

"This matter came on for hearing upon motion of plaintiff for an Order confirming the sale of certain real property at Douglas, Alaska, belonging to Edward Ehrlich, one of the above-named defendants, which said property was sold by the United States Marshal for the District of Alaska, Division No. 1 at Juneau on May 2, 1910. The plaintiff appeared by Z. R. Cheney, his attorney, and one Victor von Arx appearing by his attorney, J. G. Heid, and filed written objections to [61] the confirmation of said sale setting forth among other things that the property described was the property of one Alex Smallwood, one of the above-named defendants, and that this Court had no jurisdiction over the person of said Smallwood; said objections were argued by counsel

and after due consideration, it is ordered that the same be and they are each and all overruled.

“And it appearing to the Court from the return of the Marshal that by virtue of an execution duly and regularly issued out of this Court March 9, 1910, he levied upon all the right, title and interest of Edward Ehrlich in and to that certain real property located at Douglas, Alaska, described as the lot and building known as the Beach Store and Lodging House and the two lots and building thereon adjoining said Beach Store and Lodging House on the north. That thereafter the said Marshal did on May 2, 1910, after duly advertising said sale as required by law, sell all the right, title and interest in and to said property belonging to the said defendant, Edward Ehrlich, at public sale to one A. J. Boone, for the sum of eight hundred, twenty-five dollars (\$825), lawful money of the United States, the said Boone being the highest and best bidder at said sale and said sum being the highest sum bid for said property.

“It further appearing to the Court that said sale was in all things regularly made and fairly conducted,

“Now, therefore, it is ordered that the said sale of the above described property be and the same hereby [62] is in all things confirmed.

“Done in open Court this 11th day of May, 1910.

“EDWARD E. CUSHMAN,

“Judge of the District Court for the District of Alaska, Division No. 1.

“No. 667-A. In the District Court for Alaska. Division No. 1, at Juneau. J. M. Jenne, Plaintiff vs.

Edward Ehrlich, Alex Smallwood & L. A. Slane, Defendants. Order Confirming Sale. Filed May 11, 1910. H. Shattuck, Clerk. By H. Malone, Deputy. Z. R. Cheney, Attorney for Plft. Office: Juneau, Alaska, Lewis Block."

Mr. CHENEY.—I now offer the certificate of purchase which defendant A. J. Boone obtained from the Marshal at the sale on the execution.

Mr. COBB.—It may go in subject to the same objection—the entire objection. We will waive the reading of it, Mr. Cheney, unless you insist upon it.

Mr. CHENEY.—I won't insist upon reading it. I offer also the endorsement upon the back of the certificate of purchase and ask that that be copied into the record as part of the instrument, showing where it was recorded, etc.

COURT.—Very well.

Mr. COBB.—The whole instrument?

Mr. CHENEY.—I believe that is all the record evidence I have now, your Honor. There are so many of these papers I might have overlooked something. I think I will introduce or offer. I will call Mr. Boone.

[Defendant's Exhibit "F" — Certificate of Purchase.]

Von Arx vs. Boone. Deft's Ex. F. RER.

"CERTIFICATE OF PURCHASE.

"United States of America,
District of Alaska,—ss

"I, H. L. Faulkner, United States Marshal of the [63] said District of Alaska, Division No. 1, do hereby certify that by virtue of a certain writ of

Fieri Facias (or execution) issued out of and under the seal of the United States District Court for the District of Alaska, Division No. 1, on the 8th day of March, A. D., 1910, in cause No. 667-A, in favor of J. M. Jenne, Plaintiff, and against Edward Ehrlich, Defendant, directed and delivered to Daniel A. Sutherland, the then United States Marshal for the District of Alaska, Division No. 1, and to his deputies, he, the said Daniel A. Sutherland, as such United States Marshal for said District and Division, did on the ninth day of March, A. D. 1910, levy upon all the right, title, interest or estate had owned or held by the said Edward Ehrlich, defendant in the above-entitled cause, on the 8th day of December, 1908, or at any time thereafter of, in and to the following described real estate located, lying and being at Douglas in said Division and District of Alaska, to wit: That certain lot, piece, or parcel of land known as the Beach Store and Lodging House and the two lots adjoining same on the north together with all the buildings and improvements thereon, said property being located on the beach about five hundred feet north of the old Bears Nest Boarding House in the town of Douglas, Alaska. And that thereafter, I, H. L. Faulkner, as United States Marshal for the District of Alaska, Division No. 1, did, on the second day of May, A. D. 1910, at the front door of the United States courthouse at the hour of two o'clock P. M., of [64] said day and in the manner provided by law, and after duly advertising said property according to the statutes in such cases made and provided, sell at public sale to A. J. Boone of Douglas, Alaska, for the

sum of eight hundred twenty-five dollars, \$825.00, lawful money of the United States, the said A. J. Boone being the highest and best bidder and that being the highest sum bid for the same at said sale, all the right, title and interest of said defendant, Edward Ehrlich of which he was seized and possessed on the ninth day of March, 1910, the date of said levy, or at any time afterwards, of in and to that certain lot, piece or parcel of land known as the Beach Store and Lodging House and the two lots adjoining same on the north, said property being located on the beach about five hundred feet north of the old Bears Nest Boarding house in the town of Douglas, Alaska, together with the hereditaments and appurtenances thereunto belonging.

“And I do further certify that the purchase money so bidden at said sale has been paid to me and that said sale will become absolute and the said A. J. Boone or his assigns will be entitled to a deed of conveyance of the said land within twelve months from the date of confirmation of said sale unless the same shall be sooner redeemed according to the statute in such case made and provided.

“Given under my hand, this second day of May, A. D. 1910.

“H. L. FAULKNER.

“United States Marshal for the District of Alaska,
Division No. 1. [65]

“\$1.80. No. _____. In the District Court for Alaska, Division No. 1. at Juneau. _____, Plaintiff, vs. _____, Defendant. District of Alaska, Juneau: ss. The within instrument was

(Testimony of A. J. Boone.)

filed for record at 10 o'clock A. M, May 4, 1910, and duly recorded in book 22 of Deeds on page 369 of the records of said district. H. H. Folsom, District Recorder. Z. R. Cheney, Attorney for —————. Office: Juneau, Alaska, Lewis Block."

COURT.—Mr. Boone.

Mr. CHENEY.—Mr. Boone, will you take the stand for just a question?

[Testimony of A. J. Boone, the Defendant, in His Own Behalf.]

Whereupon A. J. BOONE, defendant in this action, was called and duly sworn, and testified as follows on his own behalf.

Direct Examination.

(Mr. CHENEY.)

Q. You live in Douglas, Mr. Boone?

A. Yes, sir.

Q. You are acquainted with the property known as the beach store and lodging-house and the property on the north, next on the north of it?

A. Yes, sir; I am acquainted with it.

Q. How long have you been in possession of that property, Mr. Boone?

A. Oh; I have been in possession of that property for seventeen or eighteen months now.

Q. You are in possession of the property now, are you? A. Yes, sir.

Q. You are the A. J. Boone who purchased that property at the Marshal's sale and received this certificate of purchase, are you—that is the one you gave me? A. Yes, sir; that is it. [66]

(Testimony of A. J. Boone.)

Q. That is the certificate of sale you received from the Marshal for the property?

A. Received from the Marshal.

Q. You have paid the \$825.00 mentioned therein?

Mr. COBB.—We object to that, it is wholly incompetent, irrelevant and immaterial.

A. Yes; I paid the \$825.00.

Mr. CHENEY.—That is all. I don't insist on that. I suppose the papers show.

Mr. COBB.—Certainly.

Mr. CHENEY.—That is all.

Mr. COBB.—No cross-examination.

COURT.—Anything further, Mr. Cheney?

Mr. CHENEY.—No; I believe that is all the testimony, your Honor; that is all.

[Evidence in Rebuttal.]

Mr. COBB.—In rebuttal we will offer a portion of the record in cause No. 667-A that has been omitted for the purpose of showing the invalidity of the deed so far as the defendant Smallwood is concerned in this case.

Mr. CHENEY.—We will object to that for this reason—it is picking out a part of the files in 781-A.

Mr. COBB.—667-A?

Mr. CHENEY.—667.

COURT.—That is the foreclosure?

Mr. CHENEY.—I object to it for this reason—that the plaintiff in this case, Victor Von Arx—neither the plaintiff, Victor Von Arx—nor the de-

fendant, A. J. Boone, were parties to that cause No. 667-A.

Argument.

COURT.—I will permit you to introduce anything that will show the validity of any attack that may be made against you? What is the affidavit you offer? [67]

Mr. COBB.—This is an affidavit for publication of summons in the case of J. M. Jenne, Plaintiff, versus Edward Ehrlich, Alex Smallwood and L. A. Slane, Defendants.

[Plaintiff's Exhibit No. 5—Affidavit in Jenne vs. Ehrlich.]

Von Arx vs. Boone. Plff's. Ex. 5. RER.

*“In the District Court for the District of Alaska
Division No. 1, at Juneau.*

No. 667.

J. M. JENNE,

Plaintiff,

EDWARD EHRLICH, ALEX SMALLWOOD and
L. A. SLANE,

Defendants.

“AFFIDAVIT FOR PUBLICATION OF SUM-
MONS.

“United States of America,
District of Alaska,—ss.

“Z. R. Cheney, being first duly sworn, on his oath says: I am the attorney for the plaintiff in the above-entitled action; said action was commenced on Feb. 12th, 1908, by the filing of a complaint and

a summons was thereupon duly issued by the Clerk and placed in the hands of the United States Marshal for Division No. 1, which said summons the Marshal retained in his hands the full period of forty days as commanded in said writ and afterwards duly returned the same with his certificate thereon showing that Alex Smallwood, one of the defendants therein named, after diligent search and inquiry could not be found in the District and Division No. 1, which fact more fully appears by the return of said Marshal dated March 23rd, 1908, and on file herein.

“Affiant further says that a cause of action exists against said Alex Smallwood and that he is a proper party defendant thereto; that said action relates to real estate located in Douglas, Alaska; that the purpose of said action is to foreclose a mortgage [68] upon real estate which said Smallwood claims by deed of purchase from the defendant Edward Ehrlich. Affiant further says that he is informed and believes that said Alex Smallwood resides in the province of British Columbia and that his present address is Riverside P. O., Log Valley, Sask.. B. C., and that he has not resided in or been a resident of the District of Alaska for more than one year last past and that he is not within the said District. Wherefore affiant prays that an Order be made for publication of the summons in this cause as provided by law.

“Z. R. CHENEY.

“Subscribed and sworn to before me this 23rd day of April, 1908.

“[Seal]

H. H. FOLSOM,

“U. S. Commissioner for Alaska at Juneau.

“No. 667. In the District Court for the District of Alaska, Division No. 1. J. M. Jenne, Plaintiff, vs. Edward Ehrlich, Alex Smallwood and L. A. Slane, Defendants. Affidavit for Publication of Summons. Filed Apr. 23, 1903. C. C. Page, Clerk, by A. W. Fox, Deputy. Z. R. Cheney, Atty. for Plaintiff. Juneau, Alaska. Plff's Ex. B. Case #781-A.”

COURT.—It may be admitted. Want to offer now the order for publication?

Mr. COBB.—Yes, sir; I next offer in evidence the order for publication of summons in the same cause No. 667-A, which reads as follows,—

COURT.—Any objection?

Mr. CHENEY.—I object to it on the ground that it is immaterial after the judgment has been once offered.

COURT.—Objection overruled. It may be admitted [69] and those matters will be considered the same as any other you offered, Mr. Cheney.

Mr. COBB:

[Plaintiff's Exhibit No. 6—Order for Publication of Summons in Jenne vs. Ehrlich.]

Von Arx vs. Boone, Plff. Ex. 6. RER.

*“In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 667.

J. M. JENNE,

Plaintiff,

vs.

EDWARD EHRLICH, ALEX SMALLWOOD,
and L. A. SLANE,

Defendants.

“ORDER FOR PUBLICATION OF SUMMONS.

“Upon reading and filing the affidavit of Z. R. Cheney, Esq., attorney for the plaintiff in the above entitled cause, showing that the said action is one for the foreclosure of a mortgage upon certain real estate located in Douglas, Alaska, and within the jurisdiction of this Court; that said Smallwood is a proper party defendant to said action; that said Smallwood, after diligent search and inquiry cannot be found in the District of Alaska, but that he is a resident of and now resides in the Province of British Columbia and praying for an order for the publication of the summons herein as provided by law,

“It is ordered that said summons be published in the Transcript, a weekly newspaper printed and published in Juneau, Alaska, for the period of six weeks once in each week and that plaintiff's attorney mail

a copy of said summons and complaint in said cause to the defendant, Alex Smallwood, at his place of residence in British Columbia, forthwith.

“Done in open court at Juneau, Alaska, April 23, 1908.

“ROYAL A. GUNNISON,

“Judge.

“No. 667. In the District Court for the District of Alaska, Division No. 1. J. M. Jenne, Plaintiff, vs. [70] Edward Ehrlich, Alex Smallwood and L. A. Slane, Defendants. Order for Publication of Summons. Filed Apr. 23, 1908, C. C. Page. By A. W. Fox. Z. R. Cheney, Attorney for Plaintiff, Juneau, Alaska.”

Now, I next offer the summons for publication and the return thereon.

COURT.—Any objection, Mr. Cheney?

Mr. CHENEY.—Same objection—it is immaterial is all.

COURT.—It may be admitted.

Mr. COBB:

[Plaintiff's Exhibit No. 7—Summons in Jenne vs.
Ehrlich.]

Von Arx vs. Boone. Plff. Ex. 7 RER.

*"In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 667.

J. M. JENNE,

Plaintiff,

vs.

EDWARD EHRLICH, ALEX SMALLWOOD,
and L. A. SLANE,

Defendants.

"SUMMONS FOR PUBLICATION.

"To Alex Smallwood, One of the Above-named Defendants, Greeting:

"You are hereby commanded to be and appear in the above-entitled court holden at Juneau in said Division and District within thirty days after the completion of the period of publication of this summons, there to answer the complaint filed against you in which complaint and action J. M. Jenne is plaintiff and Edward Ehrlich, L. A. Slane and yourself are defendants. Said action is for the foreclosure of a certain mortgage for the sum of One thousand dollars and interest which said mortgage was made and executed by Edward Ehrlich to the plaintiff in 1902 and conveys all of the interest of said Ehrlich in three lots located on the beach on Douglas Island, Alaska, in the town of Douglas, together with two buildings thereon [71] known as the Beach Store and Lodg-

ing House and the house adjoining same on the north; and if you fail to so appear and answer for want thereof the plaintiff will apply to the Court for the relief demanded in said complaint, to wit: a decree foreclosing said mortgage and for such other and further relief as the plaintiff may be entitled to as well as judgment for costs and disbursements of said suit. The Order for publication of this summons is dated April 23rd, 1908.

“In Witness Whereof I have hereto set my hand and affixed the seal of the above court this 25th day of April, 1908.

“[Seal]

C. C. PAGE,

“Clerk.

“By A. W. Fox,

“Deputy.

“Z. R. CHENEY, Attorney for Plaintiff.

“First pub. May 2. Last June 13.

“PROOF OF PUBLICATION.

“United States of America,
District of Alaska,—ss.

“Will C. Ullrich, being first duly sworn, deposes and says that he is the publisher of the Alaska Weekly Transcript, a newspaper published at Juneau, in the District of Alaska; that the notice of summons for publication, a copy of which is hereto attached and made a part of this affidavit, was first published in said newspaper, in its issue dated the second day of May, 1908, and was published in each weekly issue of said newspaper for 7 consecutive weeks thereafter, the full period of —— days, the last publication thereof being in the issue dated the

[Plaintiff's Exhibit No. 7—Summons in Jenne vs.
Ehrlich.]

Von Arx vs. Boone. Plff. Ex. 7 RER.

*"In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 667.

J. M. JENNE,

Plaintiff,

vs.

EDWARD EHRLICH, ALEX SMALLWOOD,
and L. A. SLANE,

Defendants.

"SUMMONS FOR PUBLICATION.

"To Alex Smallwood, One of the Above-named Defendants, Greeting:

"You are hereby commanded to be and appear in the above-entitled court holden at Juneau in said Division and District within thirty days after the completion of the period of publication of this summons, there to answer the complaint filed against you in which complaint and action J. M. Jenne is plaintiff and Edward Ehrlich, L. A. Slane and yourself are defendants. Said action is for the foreclosure of a certain mortgage for the sum of One thousand dollars and interest which said mortgage was made and executed by Edward Ehrlich to the plaintiff in 1902 and conveys all of the interest of said Ehrlich in three lots located on the beach on Douglas Island, Alaska, in the town of Douglas, together with two buildings thereon [71] known as the Beach Store and Lodg-

ing House and the house adjoining same on the north; and if you fail to so appear and answer for want thereof the plaintiff will apply to the Court for the relief demanded in said complaint, to wit: a decree foreclosing said mortgage and for such other and further relief as the plaintiff may be entitled to as well as judgment for costs and disbursements of said suit. The Order for publication of this summons is dated April 23rd, 1908.

“In Witness Whereof I have hereto set my hand and affixed the seal of the above court this 25th day of April, 1908.

“[Seal]

C. C. PAGE,

“Clerk.

“By A. W. Fox,

“Deputy.

“Z. R. CHENEY, Attorney for Plaintiff.

“First pub. May 2. Last June 13.

“PROOF OF PUBLICATION.

“United States of America,
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“Will C. Ullrich, being first duly sworn, deposes and says that he is the publisher of the Alaska Weekly Transcript, a newspaper published at Juneau, in the District of Alaska; that the notice of summons for publication, a copy of which is hereto attached and made a part of this affidavit, was first published in said newspaper, in its issue dated the second day of May, 1908, and was published in each weekly issue of said newspaper for 7 consecutive weeks thereafter, the full period of — days, the last publication thereof being in the issue dated the

13th day of June, 1908.

“WILL C. ULLRICH. [72]

“Subscribed and sworn to before me this 1st day of July, A. D. 1908.

“[Notarial Seal] GUY McNAUGHTON,
“Notary Public for Alaska.

“SUMMONS FOR PUBLICATION.

“No. 667.

“*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

J. M. JENNE,

Plaintiff,

vs.

EDWARD EHRLICH, ALEX SMALLWOOD
and L. A. SLANE,

Defendants.

“To Alex Smallwood, One of the Above-named Defendants, Greeting:

“You are hereby commanded to be and appear in the above-entitled court holden at Juneau in said Division and District within thirty days after the completion of the period of publication of this summons, there to answer the complaint filed against you in which complaint and action J. M. Jenne is plaintiff and Edward Ehrlich, L. A. Slane and yourself are defendants. Said action is for the foreclosure of a certain mortgage for the sum of one thousand dollars and interest which said mortgage was made and executed by Edward Ehrlich to the plaintiff in 1902 and conveys all the interest of said Ehrlich in three lots located on the beach on Douglas Island, Alaska,

in the town of Douglas, together with two buildings thereon known as the Beach Store and Lodging House and the house adjoining same on the north; And if you fail to so appear and answer for want thereof the plaintiff will apply to the Court for the relief demanded in said complaint, to wit: a decree foreclosing said mortgage and for such other and further relief as the plaintiff may be entitled to [73] as well as judgment for costs and disbursements of said suit. The order for publication of this summons is dated April 23, 1908.

“In Witness Whereof I have hereto set my hand and affixed the seal of the above Court this 25th day of April, 1908.

“[Seal]

C. C. PAGE,

“Clerk.

“By A. W. Fox,

“Deputy.

“Z. R. CHENEY, Attorney for Plaintiff,
Juneau, Alaska.

“First Pub. May 2, 1908. Last Pub. June 13, 1908.

“No. 667. In the District Court for the District of Alaska, Div. No. 1. J. M. Jenne, Plaintiff, vs. Edward Ehrlich, Alex Smallwood and L. A. Slane, Defendants. Summons for Publication. Filed Dec. 1, 1908. C. C. Page, Clerk. By R. E. Robertson, Assist. Z. R. Cheney, Attorney for Plft., Juneau, Alaska.”

Waive the reading of it? Matter for the Court and not for the Jury—the summons and return thereon.

Mr. CHENEY.—I will waive reading it; yes.

Mr. COBB.—I simply call the attention of the

(Testimony of Henry Shattuck.)

Court that the summons for publication was issued the 25th day of April, 1908, and it was published seven consecutive weeks, and there is no other proof of compliance with it, that is shown on the return. Now I will have to have the Clerk sworn.

COURT.—Very well; want Mr. Malone or Mr. Shattuck?

Mr. COBB.—I guess I better have Mr. Shattuck, the Clerk.

COURT.—Call the Clerk. These last exhibits may be copied hereafter?

Mr. COBB.—Yes, sir.

[Testimony of Henry Shattuck, for Plaintiff.]

Whereupon HENRY SHATTUCK was called and, being duly sworn, testified as follows on behalf of the plaintiff:

Direct Examination.

(Mr. COBB.)

Q. State your name. A. Henry Shattuck.

Q. What is your occupation at present—what official position do you hold? [74]

A. Clerk of the court.

Q. As such you have charge of the records of the court? A. Yes, sir.

Q. State whether or not you have in your custody as clerk the records and files in cause No. 667-A. You have official custody of those records?

A. Yes, sir; I have.

Q. What is that book you hold in your hand?

A. This is a docket.

Q. I will ask you, Mr. Shattuck, if there is in your

(Testimony of Henry Shattuck.)

possession or any record in your office of there having been any affidavit of posting of summons in cause No. 667-A, filed at any time prior to the—I will give you the date in a second—prior to December 8, 1908?

A. I can't testify without an examination—I will have to look it up to see.

Q. Is there any record of it there on your docket?

COURT.—I presume that will be admitted, won't it, Mr. Cheney?

Mr. CHENEY.—Why, I couldn't say whether the docket shows any record or not. I don't think the law requires.

COURT.—I am trying to get at the fact whether or not there was any proof of the filing.

Mr. CHENEY.—I don't think the docket does show it.

Mr. COBB.—Filing an affidavit of mailing of summons.

Mr. CHENEY.—Proof of posting of this.

WITNESS.—A. Seems to be nothing here. Prior to what time?

Mr. COBB.—Q. Prior to December 8, 1908?

A. Here is an affidavit mailing summons—complaint filed.

Q. What date? [75]

A. That is April 25, 1908.

Q. April 25, 1908. Do you know what date that was actually filed?

A. This is dated April 25, 1908, that is as much as I know about that.

Q. You don't know when that entry was made?

A. Well, over that interlined it says "see order

(Testimony of Henry Shattuck.)

April 30, 1910."

Q. I will recall that to your mind and ask you if that is the affidavit you are referring there to?

Mr. CHENEY.—I think there is a little writing down there.

WITNESS.—A. This must be the affidavit. See order April 30, 1910.

Mr. COBB.—Q. That was actually filed then April 30, 1908, as of that date?

A. Filed as of that date.

Q. Actually filed that date. Is there any other affidavit than the one actually filed on April 30 so far as your records show?

A. This was filed evidently April 30, 1910, as of April 28, 1910.

Q. Now, was there any other affidavit of service of summons filed in that cause 667-A so far as is shown by the records of your office?

A. Seems to be none; no, sir.

That will be all. You may cross-examine.

Cross-examination.

(Mr. CHENEY.)

Q. Now, just a moment, Mr. Shattuck. Now, Mr. Shattuck, you were here in court last May when the case of Von [76]

Q. (Continued.) Arx versus Boone, 781-A, was tried, weren't you? A. I was.

Q. You were then—I don't want to introduce—just what would call them to your attention to this case—what you will recall—you were in court during the trial of that case at all the time heard the trial of

(Testimony of Henry Shattuck.)

the case? A. That is my recollection.

Q. Referring to that entry of proof of summons to Mr. Smallwood, that is your handwriting?

A. It is.

Q. Now, do you recall what the Court's orders were—recall making some minute order of some kind of Judge Cushman's issued here at that time about that being filed *nunc pro tunc*?

Mr. COBB.—We shall object to that as not the proper way to prove a record in the court.

COURT.—It is referred to—the best way is to go get it.

Mr. CHENEY.—I don't know whether there is any order made. He can take the stand and swear to it.

WITNESS.—A. I might find some in my minute-book—the book that I keep in court—it would *to be* down.

Mr. CHENEY.—Q. You remember the circumstance?

A. I remember your stepping up to the desk and speaking about something, but I can't recall the circumstance in detail.

COURT.—Where is that?

A. Down here—that order ought to be on the journal [77]

Mr. CHENEY.—Q. That is in your writing too?

A. Yes.

COURT.—I think you better get the journal of that date and see it.

Mr. COBB.—I think that ought to be introduced at the proper time and not on cross-examination.

(Testimony of Henry Shattuck.)

Mr. CHENEY.—I suppose it is proper cross-examination when he states that he couldn't now recall it. We want to get at the facts.

COURT.—Yes; just as well to have it brought out now.

Mr. COBB.—Oh, yes.

Mr. CHENEY.—Q. Do you find any order?

A. I find an order substantially as in the motion.

Q. Please read the order?

A. Saturday, April 30, 1910: "Victor Von Arx vs. J. M. Jenne, A. J. Boone and D. A. Sutherland, as Marshal for the District of Alaska, Division No. 1. 781-A. Trial continued. On this day this cause came on again regularly for trial; came the plaintiff and counsel John G. Heid, Esquire; came likewise the defendant and counsel, Z. R. Cheney, Esquire; whereupon the following proceedings were had, to wit: Plaintiff's Exhibit 'C' was offered in evidence; whereupon an affidavit of mailing a copy of the complaint and summons was ordered filed *nunc pro tunc* as of April 25, 1908. And after argument had by counsel for the plaintiff and counsel for the defendants, the Court being fully advised in the premises, the Court renders its decision in favor of the defendants, and counsel for the defendants to prepare findings of fact and decree in accordance therewith."

Page 281. [78]

Q. That is the order you referred to by your notes on this? A. That is April 30, 1910.

That is all.

COURT.—Anything further, Mr. Cobb?

Mr. COBB.—That is all.

Mr. CHENEY.—As long as the matter has been gone into now by the introduction of these other papers and affidavit of publication, I will offer in evidence this affidavit of proof of mailing the summons to Alex Smallwood.

Mr. COBB.—We object to it as irrelevant and immaterial, and being the *ex parte* statement of a fact without any opportunity for testifying to it; no service on it appearing and never being made on defendant Smallwood or anyone for him, it is not binding upon Mr. Smallwood or anyone in privity with him—of course it also goes to the same objection to be made to the whole record in case the Court overrules that. I only state it now.

COURT.—The objection may be overruled and admitted with the same understanding that it is subject to a motion to strike, supposing that the service was not a good one. Anything further, gentlemen? Of course, I take it that is substantially the only question in the case.

[Exhibit—Affidavit of Z. R. Cheney, in Jenne vs.
Ehrlich.]

*“In the District Court for the District of Alaska,
Division No. 1 at Juneau.*

“No. 781-A.

J. M. JENNE,

Plaintiff,

vs.

EDWARD EHRLICH, ALEX SMALLWOOD
& L. A. SLANE,

Defendants.

“AFFIDAVIT.

“United States of America,
District of Alaska,—ss.

“Z. R. Cheney, being first duly sworn, on oath deposes and says: I am the attorney for A. J. Boone and D. A. Sutherland, two of the defendants in cause No. 781-A of the records and files of this court; said cause is a suit for an injunction wherein the plaintiff, Victor Von Arx, alleges in his complaint, among other things, that the judgment and decree of this Honorable Court, dated December 8, 1908, is void for the reasons, (1) that the record shows no proof of the mailing of the copy of summons and complaint to Alex Smallwood, one of the defendants in cause No. 667-A of this Court, as required by the order for publication of summons, made and entered in said cause No. 667-A, on April 23, 1908; (2) because there is no proof of service upon either Edward Ehrlich or Alex Smallwood, defendants in cause No. 667-A, of

a copy of the answer of L. A. Slane, one of the defendants in said cause; that the property mentioned and described in the decree is the same property mentioned and described in the executions issued upon said decree and which the plaintiff Von Arx is attempting, in cause No. 781-A, to obtain an injunction to prevent defendant from selling said property.

“Affiant further says that he was the attorney for J. M. Jenne, plaintiff in cause No. 667-A, and that he [79] knows that the copy of the summons and complaint in said cause was mailed on or about the 25th day of April, 1908, affiant further says that on or about the 20th day of April, 1908, while acting as such attorney for J. M. Jenne, he made a trip to Douglas, Alaska, to see Edward Ehrlich and obtain from him the address of the said Alex Smallwood; that he found said Edward Ehrlich at the Beach Store and Lodging House in said Douglas, Alaska, and that said Edward Ehrlich in answer to affiant's request for such address gave affiant the following address: ‘Alex Smallwood, Riverside P. O., Log Valley, Sask. B. C.’; that thereafter on April 23, 1908, affiant filed an affidavit in said cause No. 667-A showing the non-residence of the said Alex Smallwood and asked for an order of publication of summons as required by law; that on the same day an order for the publication of said summons was duly made and entered in said cause; to which order reference is hereby made; that about two days thereafter, to wit: on or about April 25, 1908, this affiant deposited in the United States postoffice at Juneau, Alaska, in a sealed envelope addressed to Alex Small-

wood, Riverside, Log Valley, Sask. B. C., a true copy of said summons and complaint in said cause No. 667-A, as provided in said order of Court; that said envelope had on the outside thereof a return card giving the name and address of sender of said letter; that affiant never received any reply from said Alex Smallwood and the said envelope was never returned to affiant.

“Affiant further says that he is informed and believes and therefore states the fact to be that the defendant L. A. Slane on or about the 2d day of September, [80] 1908, at Douglas, Alaska, served a copy of his answer in said cause upon the defendant Edward Ehrlich personally and as agent of said Alex Smallwood. Further affiant saith not.

“Z. R. CHENEY.

“Subscribed and sworn to before me this 28th day of April, 1910.

“[Notarial Seal] NEWARK L. BURTON,
“Notary Public for Alaska.

“4/25/1908. No. 667-A. In the District Court for Alaska, Division No. 1, at Juneau. J. M. Jenne, Plaintiff, vs. Edward Ehrlich, Alex Smallwood and L. A. Slane, Defendants. Affidavit of Mailing Summons and Complaint. Filed Apr. 25, 1908. H. Shattuck, Clerk. See Order Apr. 1910. Z. R. Cheney, Attorney for J. M. Jenne. Office: Juneau, Alaska, Lewis Block.”

Mr. COBB.—That is the only question that has been raised.

COURT.—Not very much for the jury to find.

Mr. CHENEY.—If the Court please, now in re-

buttal I will offer the answer of the defendants or affidavit of mine for the publication of summons—counsel is trying to attack the validity of the judgment, I offer findings [81] of fact and conclusions of law and judgment in 781-A where Judge Cushman made and filed in May, 1910, in regard to the same matter. Now, I don't know whether it is necessary to introduce that—in case, probably by calling the Court's attention, he would take judicial knowledge of it.

COURT.—I don't see how it can be admissible under any theory because it would serve as a precedent as any other ruling of the Court if applicable, but it can't affect the proceedings upon which you rely as a basis of evidence.

Mr. COBB.—We object to it being made part of the record because it is irrelevant and immaterial.

Mr. CHENEY.—Can't be that.

COURT.—Yes.

Mr. COBB.—I object to it being made a part of the evidence and offered in evidence for the reason it is wholly irrelevant and immaterial.

COURT.—No; I can't say, Mr. Cheney, of course the Court will take judicial knowledge of it. The only influence it can have is the view that the other judge took of the question when it was before him.

Argument.

Whereupon Court adjourned until ten o'clock tomorrow morning.

[Proceedings Had January 10, 1911.]

And thereafter at ten o'clock in the forenoon of January 10, 1911, this cause again coming on for

trial, and the jury being present, the following proceedings were had:

COURT.—Either party move for a directed verdict?

Mr. COBB.—I wish to do so. [82]

Mr. CHENEY.—I shall move for a directed verdict at the close of the case.

Mr. COBB.—The time is hardly ripe just yet.

COURT.—Very well.

[Motion to Strike Certain Evidence, etc.]

Mr. COBB.—Now, I desire at this time—the entire record in cause No. 667-A being before the Court, all admitted in evidence with the understanding that the objections have been made upon the whole record—I now move the Court to strike out from the evidence the first execution in 1909, the sale thereunder in cause No. 667-A, because the same is not plead as part of the title upon which the defendants rely. I further move the Court to strike from the evidence the entire record in that case upon the ground that the judgment in so far as it purports to be a judgment against Smallwood, in whom the title was vested in 1909, the judgment is entirely void for the reason that the record in that case shows that Smallwood was a nonresident of the District of Alaska, and that the attempted service upon him of summons is absolutely void and the judgment consequently void. The judgment is void for the following reasons: that it was rendered upon service by publication; that the order for the service of publication is void in that it did not direct a service—a posting of the summons directed to the defendant

Alex Smallwood at the last known place of residence as described in the affidavit but simply directed that it be deposited in the postoffice directed to him at his postoffice address in British Columbia. The summons is absolutely void in failing to comply with one of the necessary prerequisites of the statute in that *that* [83] the length of time prescribed in the order is not stated in the summons. A summons, I call the attention of the Court—let me get my motion down then I will argue that further on. The judgment is void for the following reasons: That at the time of the rendition of the pretended judgment as against Smallwood there was on file no proof of posting whatsoever and the attempted curing of that by the filing of a paper *nunc pro tunc* in 1910 cannot cure a void judgment, and for the further reason that the affidavit which is offered as a curative process in itself cannot authorize any judgment for it fails to show that on depositing in the postoffice was the postage prepaid. Now, then that is the motion.

Argument.

Mr. CHENEY.—Now, I don't care to take the time of the Court longer upon this. It seems to me that the defendant is entitled to a judgment—to a verdict by the jury in this case.

COURT.—You want to make your motion of record, same as counsel did.

[Motion for a Directed Verdict, etc.]

Mr. CHENEY.—Yes; I will make the motion. The evidence having been taken, and both sides having rested the case, comes now the defendant and moves

the Court for an order directing the jury to return a verdict for the defendant. I don't think that need to follow the statute—the statute prescribes what the judgment shall be. I think the verdict for the defendant would be all that is required. I haven't got the code with me.

COURT.—Want the code?

Mr. CHENEY.—If the Court please, I want to just see. [84] There is a certain judgment prescribed, I think, under the statute.

COURT.—There is under ejectment.

Mr. CHENEY.—That the plaintiff take nothing by his action. I don't remember how it prescribes—that the defendant is entitled to possession or what. I know I had one judgment before Judge Brown that was reversed on that ground.

COURT.—The verdict should be the way—you should ask for the verdict that the plaintiff is not the owner or entitled to possession of the property. I think that is the statute.

Mr. CHENEY.—That the plaintiff is not entitled to the possession of the property.

COURT.—Yes; I think that is the statute. Proceed, Mr. Cobb.

Argument.

Mr. COBB.—* * * That judgment is absolutely void and we ask for a verdict.

COURT.—Call the jurymen, Mr. Bailiff. Let the record show the jury is all present, Mr. Reporter.

[Decision.]

First, passing upon the motion made by counsel for the plaintiff involves the question of passing on

the case as made by the defendant. The motion requests the Court to strike all the evidence of the defendant concerning the acquisition of the title through the judgment rendered in cause 667-A, Jenne vs. Ehrlich et al., for the reason that the separate answer of the defendant doesn't sufficiently plead the estate of the defendant; and for the further reason that the judgment against Smallwood is void because there was never any service of [85] summons on Smallwood in the case of Jenne against Ehrlich, and the Court had no jurisdiction to enter judgment against him. With reference to the first question it seems to me that the answer might have pleaded the ultimate facts rather than pleading the evidence, but still I think it is sufficiently plead in ejectment to warrant the submission of evidence if the evidence is competent. The judgment in that case was entered—that is in the case of Jenne versus Ehrlich, et al.—foreclosing the mortgage in the first place, and giving judgment for Jenne and one of the defendants, Slane, on certain notes that they held against Ehrlich, that were secured by mortgages. The mortgages were foreclosed giving to Slane the prior lien, and Jenne second lien on the property. Personal service was had upon Ehrlich—service was had upon the defendant Smallwood or at least attempted to be had by publication. Slane appeared and filed his cross-complaint setting up his second mortgage. He failed to serve on either Ehrlich or Smallwood any copy of his cross-complaint; so that the judgment in that case in favor of the defendant Slane against Ehrlich

of course must be void because there was no service or attempted service, but that isn't material in the consideration of the questions now before the Court.

The question is: Was Smallwood properly before the Court so that the Court had jurisdiction to pass upon his title to the property and to foreclose the mortgage on the property as against him as it had against Ehrlich, although personal service was had on Ehrlich. Counsel complains [86] that the order for the publication of summons in the first instance was erroneous because it merely directed the summons and complaint to be forwarded to British Columbia, to the defendant Smallwood at his last-known place of address, omitting to state what that particular address was. The affidavit for publication stated correctly or at least pretended to state correctly what the particular address was, and the Court must accept the record. It must be assumed that it was the correct address on any collateral attack. The proof of the forwarding is in compliance with the affidavit for publication, but counsel says the proof was furnished too late. The proof was not on file at the time the judgment in the cause was entered.

Now, let us see if that is fatal to the jurisdiction of the Court. I think and I not only think so but I am satisfied that the courts bear out the statement that the furnishing of proof is not a condition precedent to the exercise of jurisdiction by the Court so long as it subsequently appears, even after the entry of judgment and before any intervening rights accrued, that the jurisdictional facts existed, that is: that the

man was properly served in accordance with the statute.

The plaintiff in this case acquired his title long after Judge Cushman had permitted the proof to be supplied. An examination of the record prior to plaintiff's purchase would have disclosed the fact that the judgment was a valid judgment, if perfect in every respect except furnishing proof of completion of service. Now, let us see what the Courts have said upon that subject. In *Burr v. Seymour*, reported in 45 Northwestern, beginning at page [87] 715, the syllabus provides:

“In an action commenced against a nonresident defendant by publication of the summons, where judgment for want of an answer is properly entered, except that the affidavit of publication is insufficient, if the summons was in fact duly published, and no facts appear to show that it would be unjust to the defendant, or would affect intervening rights of third persons, the Court ought, under sections 124, 125, c. 66, Gen. St. 1878, to allow a proper affidavit of publication to be filed *nunc pro tunc*.”

If it is defective, if it can be amended so as to make it tell the truth, in other words if the original affidavit didn't show jurisdiction and the amended affidavit could show jurisdiction, it is the very same case we have here because the original affidavit was insufficient to show the Court had jurisdiction, but the Court permitted it to be amended to show jurisdictional facts. That case shows conclusively this state of facts—that it is not the proof of jurisdiction, it

is the existence of jurisdiction which affects the judgment. The proof may be afterwards supplied so long as no intervening rights have accrued; in other words, even if there had been no affidavit of publication at all filed and the judgment was entered but the record were corrected by the furnishing of the proof of the existence of jurisdictional facts before any other intervening rights, the Court will uphold the judgment. The authorities are quite unanimous on this proposition. In the limited time I had to investigate the matter last night while I discovered any quantity of opinion with reference to some of the questions that counsel have raised, I have found no difference of judicial opinion with reference to the right to supply the proof of jurisdictional [88] facts which existed at the date of the entry of judgment. Quoting now from Frisk et al. vs. Reigelman et al., reported in the 43 Northwestern on page 1117, and I read from page 1120:

“There is however a substantial defect in the affidavit of publication, which, if not corrected, would be fatal to the garnishee judgment. The statute (section 2640, Rev. St.) requires the publication to be made ‘not less than once a week for six weeks.’ The affidavit of publication states that the same was printed and published in such newspaper ‘six weeks successfully, commencing,’ etc. That this is not a compliance with the statute is freely conceded by counsel for the plaintiffs. A motion on behalf of the plaintiffs was submitted at the argument for leave to file a corrected affidavit of publication,

and it was shown that the summons was in fact published once a week for six weeks, as required by the order and the statute. The motion must be granted, and the plaintiffs have leave to supply such defect. But it should be supplied in the first instance in the court in which the action was brought and the judgment entered, so that the records of that court may show regular procedure in the action. A corrected affidavit of publication may therefore be filed with the clerk of the Circuit Court, who is directed to transmit the same to this court to be attached to the record herein. Until the receipt thereof judgment will not be entered."

That was long after judgment and it was a direct appeal, not on collateral attack. Also in the case from Kansas, Hackett et al. vs. Lathrop et al., 14 Pacific, 220:

"Where service is made by publication in an action named in section 72, c. 80, Comp. Laws 1879, and the notice is regular in form, but it appears from the proof of publication that the notice was first published only 37 days before judgment, such proof may, after judgment, be amended, in order to show that the notice was in fact first published 44 days before the date of the rendition of the judgment."

I take it therefore that under this showing if the affidavit itself is sufficient, that the judgment is valid as to Smallwood, because the Court did have jurisdiction [89] of him, but at that time didn't have the proof which was afterwards submitted. Even on a

direct attack—in that case it could only result in the setting aside of the judgment, the admission of the proof and the re-entry of judgment and it couldn't be done even in that case or shouldn't be done unless a meritorious defense is offered.

Now, the question is raised as to the proof of forwarding that affidavit; that is, it doesn't affirmatively show that postage was prepaid and counsel has read some general statements from Fitman's Trial Procedure that would seem to indicate that it must affirmatively appear that postage was prepaid. The affidavit does state that there was a return card; the affidavit says that it was sent to his last known place of address. The affidavit does state substantially what the letter of the statute requires, except that it be implied from the words used in the statute that it means postage—I should say postage prepaid. The statute requires that the plaintiff shall also direct a copy of the complaint to be forthwith deposited in the postoffice, directed to the defendant at his place of residence, unless it shall appear that such residence is neither known to the party making the application nor can with reasonable diligence be ascertained. The affidavit was in strict compliance with the statute, because the statute doesn't say that the proof must show postage prepaid; and the court will certainly presume that in favor of its record in the absence of any proof to the contrary that the postage was prepaid, the peculiar wording of the statute is substantially used in the affidavit. [90]

Counsel also attacks the affidavit, but *Pennoyer vs. Neff*, I think settles that question. I don't know

whether I have it here or not. I have the Oregon case which quotes it—that the affidavit cannot be questioned in a collateral attack, reading from the case of George vs. Nowlan, 38 Oregon, 537:

“The statute requires that certain facts shall be made to appear by affidavit, to the satisfaction of the Court or judge thereof (Hill’s Ann. Laws, #56), before an order of publication is made; and where the affidavit tends to prove such facts, and the Court or judge adjudges it sufficient, such adjudication is conclusive in a collateral proceeding: 17 Enc. Pl. & Prac. 78; *Pennoyer vs. Neff*, 95 U. S. 714. The defects in the affidavit referred to could have been taken advantage of by an appeal or some other direct proceeding, but do not furnish ground for an injunction restraining the enforcement of the decree.”

I was unable to get the 9 Oregon, but I have a syllabus stating in the digest that the defect stated in the order of publication cannot be questioned by collateral attack. But the main question relied upon by counsel is the invalidity of the judgment in *Jenne vs. Ehrlich*, on account of the absence of proof of service at date of entry of judgment. Some of the questions raised by counsel may not be subject to collateral attack or may not be the subject of consideration upon collateral attack, the main reason that I sustain the judgment and the title procured under the judgment, is the fact that the proof was supplied although after judgment was entered, yet supplied before the plaintiff acquired any title, no intervening rights having been acquired, under the statute that proof can be

supplied at any time. So, I think the judgment in 667-A, Jenne versus said defendant Ehrlich is good—against Ehrlich and Smallwood. [91]

But counsel contends Ehrlich had no right of redemption, not being a judgment debtor in contemplation of the statute; he having no right of redemption, the attempted redemption could only result in restoring the property to the man who held the legal title. Without passing on the question as to whether Ehrlich could redeem or not, let us see where Smallwood is. Meyers and Slane purchased the property under the judgment rendered in 667-A, Jenne versus Ehrlich—Ehrlich attempted to redeem. There is no evidence in this case that he ever attempted to redeem for Smallwood. If he couldn't redeem, couldn't succeed in redeeming, about all he could take then would be an assignment of their claim. He could take that. It couldn't be said that that was an act which would redound to the benefit of Smallwood, because the evidence indicates that Ehrlich paid it for himself, and, if he did buy it for himself, it couldn't benefit Mr. Smallwood. The payment of the debt by Ehrlich could not result in what counsel claims, that is: relieving the property of the burden of the lien. If he couldn't redeem, I say he must have taken an assignment of the claim and the lien would be in him on the Smallwood property. It appears Smallwood has made no redemption; hasn't tried to acquire any right to the property at all, and he can't come in and claim at this time in an action of this kind where he must rely upon his own title, he can't complain of the action of another even claiming under someone else.

If Ehrlich's title—if such legal title has been given and even if Ehrlich is not a judgment debtor in the contemplation of the statute, which would give him a right to redeem, it is it seems to me an endeavor to redeem not for Smallwood but for himself. [92] He would still have an interest in the property. Whatever interest he had in it would be sold under this judgment. Now, I am not saying that would give a legal title, it certainly gives him a better title than the plaintiff in this case, because in my estimation he has absolutely no title. If I am right in the judgment being valid, the Court is unquestionably correct in the conclusion that Smallwood has no title whatever, and for the reasons assigned, the motion to strike the evidence will be denied.

The motion on the part of the plaintiff also to direct a verdict in favor of the plaintiff will also be denied.

Defendant has moved for a directed verdict and since there is nothing before the Court to submit to the jury, being purely a question of law—the question of rental now having passed out of the case, since the Court holds that the plaintiff hasn't made a case, the Court, therefore, will grant the motion of the defendant to direct a verdict and the jury will be at this time directed to render a verdict that the plaintiff is not the owner or entitled to the possession of the property described in the complaint.

Mr. COBB.—The Court will give us an exception.

COURT.—Yes, sir; let the record show an exception in each instance to the overruling of the motion and to the failure or refusal to direct a verdict in

favor of the plaintiff. But, as before stated, the Court will direct the jury to return a verdict in favor of the defendant that the plaintiff is not entitled to the possession of the property described in the complaint or any part thereof. [93] In this case, I think, where there are less than the proper number of jurors, it would be well to have each juror sign the verdict. Of course, it doesn't make much difference in a directed verdict. Let the verdict be received and filed.

FINIS.

Certificate [of Reporter Transcript].

I, R. E. Robertson, Official Court Reporter for the District Court for the First Division of Alaska, hereby certify that the foregoing and hereto annexed is a true, full and complete transcript, as transcribed and extended from my shorthand notes and the exhibits offered at the trial thereof, of the proceedings taken at the trial of the above-entitled cause.

Dated at Juneau, Alaska, this — day of May, 1911.

Official Court Reporter for the District Court for the First Division of Alaska. [94]

[Certificate and Order Re Bill of Exception.]

And because the above and foregoing matters do not appear of record I, Thomas R. Lyons, the Judge before whom said cause was tried, do hereby certify that the above and foregoing is a full, true and correct bill of exceptions, and the same contains all the evidence offered by both parties to the said cause, and the exceptions and objections taken and allowed,

the same is hereby ordered filed and made a part of the record herein, during the term of court at which said cause was tried.

Dated this the 20th day of May, 1911.

(Signed) THOMAS R. LYONS,
Judge.

[Endorsed]: Filed May 20, 1911. E. W. Pettit,
Clerk. By H. Malone, Deputy. [96]

*In the District Court for Alaska, Division No. 1, at
Juneau.*

No. 819-A.

VICTOR VON ARX,

Plaintiff,

vs.

A. J. BOONE,

Defendant.

Petition for Writ of Error.

Victor Von Arx, conceiving himself to be aggrieved by the verdict and judgment of the court in the above-entitled and numbered cause, comes now by his attorney and petitions the court to grant him a writ of error to the Honorable the U. S. Circuit Court of Appeals for the Ninth Circuit, that the said cause and the proceedings therein may be reviewed by the said Appellate Court; and to fix the sum of security for costs which your petitioners, as plaintiff *at error*, may be required to give upon such writ of error.

And for this he will ever pray, etc.

J. H. COBB,
Attorney for Victor Von Arx.

[Order Allowing Writ of Error.]

Upon the above and foregoing petition and the assignments of error filed herewith, it is ordered that the said writ of error be, and the same, is hereby allowed and the plaintiff in error is required to give a bond for costs for the sum of \$250.00.

Dated this the 29th day of May, 1911.

THOMAS R. LYONS,
Judge.

[Endorsed]: Original. No. 819-A. In the District Court for Alaska, Division No. 1, at Juneau. Victor Von Arx, Plaintiff, vs. A. J. Boone, Defendant. Petition for Writ of Error. Filed May 29, 1911. E. W. Pettit, Clerk. By H. Malone, Deputy. Malony & Cobb, Attorneys for Plaintiff. Office: Juneau, Alaska. [97]

In the District Court for Alaska, Division No. 1, at Juneau.

No. 819-A.

VICTOR VON ARX,

Plaintiff,

vs.

A. J. BOONE,

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, that we, Victor Von Arx, as principal, and Emery Valentine, as surety, acknowledge ourselves to be

indebted and firmly bound unto A. J. Boon in the sum of \$250.00, lawful money of the United States, to the payment of which sum, well and truly to be made, we hereby bind ourselves, our, and each of our, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seal and dated this the —— day of May, 1911.

THE CONDITION of the above obligation, however, is such that whereas the above bound Victor Von Arx has sued out a writ of error to the United States Circuit Court of Appeals of the Ninth Circuit to reverse the judgment in the above entitled and numbered cause. Now, if the above bound Victor Von Arx shall prosecute his writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be null and void; otherwise to remain in full force and virtue.

Witness our hands this the 27th day of May, 1911.

VICTOR VON ARX,

By J. H. COBB,

His Atty. of Record.

EMERY VALENTINE.

The above and foregoing bond is approved, this the 29th day of May, 1911.

THOMAS R. LYONS,

Judge.

[Endorsed]: Original. No. 819-A. In the District Court for Alaska, [98] Division No. 1, at Juneau. Victor Von Arx, Plaintiff, vs. A. J. Boon, Defendant. Bond on Writ of Error. Filed May 29, 1911. E. W. Pettit, Clerk. By H. Malone, Deputy.

Malony & Cobb, Attorneys for Plaintiff. Office:
Juneau, Alaska. [99]

*In the District Court for Alaska, Division No. 1, at
Juneau.*

No. 819-A.

VICTOR VON ARX,

Plaintiff,

vs.

A. J. BOONE,

Defendant.

Assignment of Errors.

Now comes the plaintiff by his attorneys and assigns the following errors committed by the Court upon the trial and in the rendition of the judgment therein and upon which he will rely in the Appellate Court.

1st. The Court erred in ruling and holding that the proceedings in cause No. 667-A, entitled *J. M. Jenny vs. Alex. Smallwood et al.*, were valid as against said Smallwood and that the decree therein and proceedings thereunder divested Smallwood of the title to the property in controversy.

2nd. The Court erred in directing the jury to return a verdict for the defendant.

3rd. The Court erred in refusing to direct the jury to return a verdict for the plaintiff.

And for the said errors the said plaintiff and plaintiff at error prays the Court to reverse the said judgment and remand the cause, with instructions that

upon another trial the court direct a verdict for the plaintiff.

J. H. COBB,
Attorneys for Plaintiff at Error.

[Endorsed]: Original. No. 819-A. In the District Court for Alaska, Division No. 1, at Juneau. Victor Von Arx, Plaintiff, vs. A. J. Boone, Defendant. Assignment of Errors. Filed May 29, 1911. E. W. Pettit, Clerk. By H. Malone, Deputy. Malony & Cobb, Attorneys for Plaintiff. Office: Juneau, Alaska. [100]

In the District Court for Alaska, Division No. 1, at Juneau.

No. 819-A.

VICTOR VON ARX,

Plaintiff,

vs.

A. J. BOONE,

Defendant.

Writ of Error [Original].

The President of the United States to the Judges of the District Court for Alaska, Division No. 1, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, between Victor Von Arx, plaintiff, and A. J. Boone, defendant, a manifest error hath happened, to the great prejudice and damage of the said plaintiff, Victor Von Arx, as is said and appears in the petition herein:

We being willing that error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in that behalf, do command you, if judgment be therein given that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Justices of the Honorable, the U. S. Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, State of California, together with this writ, so as to have the same at said place in said Circuit, on or before thirty days after the date hereof so that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and justice and according to the laws and customs of the United States should be done.

Witness the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, this the —— day of May, 1911.

Attest my hand and the seal of the District Court for Alaska, Division No. 1, on the day and year last above written.

[Seal]

H. MALONE,

Deputy Clerk District Court, District of Alaska, Division No. 1. [101]

[Endorsed]: Original. No. 819-A. In the District Court for Alaska, Division No. 1, at Juneau. Victor Von Arx, Plaintiff, vs. A. J. Boone, Defendant. Writ of Error. Filed May 29, 1911. E. W. Pettit, Clerk. By H. Malone, Deputy. [102]

*In the District Court for Alaska, Division No. 1, at
Juneau.*

No. 819-A.

VICTOR VON ARX,

Plaintiff,

vs.

A. J. BOONE,

Defendant.

Citation in Error [Original].

United States of America,—ss.

The President of the United States of America to A.

J. Boon, Greeting:

You are hereby cited and admonished to be and appear in the United States Court of Appeals for the Ninth Circuit to be holden in the City of San Francisco, State of California, within thirty days from the date of this writ, pursuant to a writ of error, filed in the Clerk's office of the District Court for Alaska, Division No. 1, wherein Victor Von Arx is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment mentioned in said writ of error, should not be corrected, and speedy justice done to the parties in that behalf.

Witness the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, this 29th day of May, 1911, and of the Independence of the United States the one hundred and thirty-fifth.

THOMAS R. LYONS,
Judge.

Service of the above and foregoing citation in error is admitted to have been duly made, this 29 day of May, 1911.

Z. R. CHENEY,

Attorney for A. J. Boon, Defendant at Error. [103]

[Endorsed]: Original. No. 819-A. In the District Court for Alaska, Division No. 1, at Juneau. Victor Von Arx, Plaintiff, vs. A. J. Boone, Defendant. Citation in Error. Filed May 31, 1911. E. W. Pettit, Clerk. By J. J. Clark, Deputy. [104]

No. 819-A.

VICTOR VON ARX,

Plaintiff,

vs.

A. J. BOONE,

Defendant.

Order Extending Time to File Transcript.

Because there is not sufficient time to make return to the writ of error in the above cause, within the thirty days from the date of said writ, the time for returning the same and filing the transcript in the Appellate Court, is, on application of plaintiff's counsel, hereby extended until and including the fifteenth day of August, 1911.

Dated this June 2, 1911.

EDWARD E. CUSHMAN,

Presiding Judge in Division No. 1.

[Endorsed]: No. 819-A. In the District Court for Alaska, Division No. 1, at Juneau. Victor Von Arx, Plff., vs. A. J. Boone, Deft. Order Extending Time

to File Transcript. Filed Jun. 2, 1911. E. W. Pettit, Clerk. By J. J. Clarke, Deputy. J. H. Cobb, Atty. for Plff. [105]

In the District Court for Alaska, Division No. 1, at Juneau.

No. 819-A.

VICTOR VON ARX,

Plaintiff,

vs.

A. J. BOONE,

Defendant.

Praecipe [for Transcript of Record].

To the Clerk of the District Court for Alaska, Division No. 1.

You will please make up a transcript to the record for Writ of Error in the above-entitled cause and include the following pleadings and papers, to wit:

- (1) Complaint.
- (2) Answer.
- (3) Reply.
- (4) Judgment.
- (5) Bill of Exceptions.
- (6) Petition for Writ of Error.
- (7) Bond on Writ of Error.
- (8) Assignment of Writ of Error.
- (9) Writ of Error Original.
- (10) Citation Original.
- (11) Order Extending Time to File Transcript.
- (12) This Praecipe.

Said transcript to be made up in accordance with

the rules of practice of the United States Circuit Court of Appeals of the Ninth Circuit and the rules of this court.

J. H. COBB,
Attorneys for Victor Von Arx.

[Endorsed]: Original. No. 819-A. In the District Court for Alaska, Division No. 1, at Juneau. Victor Von Arx, Plaintiff, vs. A. J. Boon, Defendant. Praecepse. Filed Jul. 13, 1911. E. W. Pettit, Clerk. By J. J. Clarke, Deputy. Malony & Cobb, Attorneys for——— Office: Juneau, Alaska. [106]

In the District Court for the District of Alaska, Division No. 1, at Juneau.

No. 819-A.

VICTOR VON ARX,

Plaintiff, and Plaintiff in Error,

vs.

A. J. BOONE,

Defendant, and Defendant in Error.

Certificate [of Clerk U. S. District Court to Record].

I, E. W. Pettit, Clerk of the District Court for the District of Alaska, Division Number One, do hereby certify that the foregoing and hereto attached one hundred and six pages of typewritten and written matter, numbered from one to one hundred and six, both inclusive, constitute a full, true and correct copy of the record, and the whole thereof, prepared in accordance with the praecipe of the plaintiff and plaintiff in error on file in my office and made a part

hereof, in Cause No. 819-A of the above-entitled court, wherein Victor Von Arx is plaintiff and plaintiff in error, and A. J. Boone is defendant and defendant in error.

I do further certify that the said record is by virtue of Writ of Error and Citation issued in this cause, and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the costs of preparation, examination and certificate, amounting to Thirty and 80/100 Dollars (\$30.80), have been paid to me by Malony & Cobb, attorneys for plaintiff and plaintiff in error.

In witness whereof I have hereunto set my hand and affixed the seal of the above-entitled court this 8th day of August, 1911.

[Seal] E. W. PETTIT,
Clerk of District Court, Dist. of Alaska, Division
No. 1.

[Endorsed]: No. 2017. United States Circuit Court of Appeals for the Ninth Circuit. Victor Von Arx, Plaintiff in Error, vs. A. J. Boone, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court for the District of Alaska, Division No. 1.

Filed August 15, 1911.

F. D. MONCKTON,
Clerk.

By Meredith Sawyer,
Deputy Clerk.

